

**TITLE 13. PUBLIC SAFETY****CHAPTER 5. LAW ENFORCEMENT MERIT SYSTEM COUNCIL**

Authority: A.R.S. §§ 41-1830.11 through 41-1830.15

*Editor's Note: The former rules in this Chapter, which were repealed effective May 10, 2000, were codified under the old numbering system in the Arizona Administrative Code. The Historical Notes for the former rules therefore do not appear here. Editor's Notes at the beginning of Articles 1 through 9, however, indicate the location of the former rules in those Articles, and the rescinded rules are on file in the Office of the Secretary of State (Supp. 00-2).*

**ARTICLE 1. GENERAL PROVISIONS**

*Editor's Note: Former Article 1, consisting of Sections R13-5-01 through R13-5-04, repealed by final rulemaking at 6 A.A.R. 1982, effective May 10, 2000; new Article 1, consisting of Sections R13-5-101 through R13-5-104, adopted by final rulemaking at 6 A.A.R. 2090, effective May 10, 2000 (Supp. 00-2).*

## Section

R13-5-101. Definitions

**EMERGENCY RULEMAKING**

R13-5-101. Definitions

R13-5-102. Law Enforcement Merit System Council

R13-5-103. Personnel Administration

R13-5-104. General Information

**ARTICLE 2. CLASSIFICATION AND COMPENSATION**

*Editor's Note: Former Article 2, consisting of Sections R13-5-10 and R13-5-11, repealed by final rulemaking at 6 A.A.R. 1982, effective May 10, 2000; new Article 2, consisting of Sections R13-5-201 through R13-5-204, adopted by final rulemaking at 6 A.A.R. 2090, effective May 10, 2000 (Supp. 00-2).*

## Section

R13-5-201. Classification

R13-5-202. Compensation

R13-5-203. Pay Administration

R13-5-204. Work Hours and Work Options

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*Editor's Note: Former Article 3, consisting of Section R13-5-15, repealed by final rulemaking at 6 A.A.R. 1982, effective May 10, 2000; new Article 1, consisting of Sections R13-5-301 through R13-5-317, adopted by final rulemaking at 6 A.A.R. 2090, effective May 10, 2000 (Supp. 00-2).*

## Section

R13-5-301. Recruitment

R13-5-302. Examinations

R13-5-303. Applicant Preference Points

R13-5-304. Employment

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R13-5-314. Intermittent Appointments

R13-5-315. Employee Conduct

R13-5-316. Probation

R13-5-317. Performance Evaluations

**ARTICLE 4. ASSIGNMENTS**

*Editor's Note: Former Article 4, consisting of Section R13-5-*

*20, repealed by final rulemaking at 6 A.A.R. 1982, effective May 10, 2000; new Article 4, consisting of Sections R13-5-401 through R13-5-403, adopted by final rulemaking at 6 A.A.R. 2090, effective May 10, 2000 (Supp. 00-2).*

## Section

R13-5-401. Special Duty Assignments

R13-5-402. Uncovered Appointments

R13-5-403. Transfer of External Functions

**ARTICLE 5. EMPLOYEE LEAVE**

*Editor's Note: Former Article 5, consisting of Sections R13-5-25 through R13-5-28, repealed by final rulemaking at 6 A.A.R. 1982, effective May 10, 2000; new Article 5, consisting of Sections R13-5-501 through R13-5-513, adopted by final rulemaking at 6 A.A.R. 2090, effective May 10, 2000 (Supp. 00-2).*

## Section

R13-5-501. Employee Leave Guidelines

R13-5-502. Administrative Leave

R13-5-503. Annual Leave

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R13-5-503. Annual Leave

R13-5-504. Civic Duty

R13-5-505. Compensatory Leave

R13-5-506. Donated Annual Leave

R13-5-507. Holiday Leave

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R13-5-513. Sick Leave

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R13-5-513. Sick Leave

**ARTICLE 6. GRIEVANCES**

*Editor's Note: Former Article 6, consisting of Sections R13-5-30 through R13-5-36, repealed by final rulemaking at 6 A.A.R. 1982, effective May 10, 2000; new Article 6, consisting of Sections R13-5-601 and R13-5-602, adopted by final rulemaking at 6 A.A.R. 2090, effective May 10, 2000 (Supp. 00-2).*

## Section

R13-5-601. Agency Grievance System

R13-5-602. Council Review

**ARTICLE 7. DISCIPLINE AND APPEALS**

*Editor's Note: Former Article 7, consisting of Sections R13-5-40 through R13-5-43, repealed by final rulemaking at 6 A.A.R. 1982, effective May 10, 2000; new Article 7, consisting of Sections R13-5-701 through R13-5-705, adopted by final rulemaking at 6 A.A.R. 2090, effective May 10, 2000 (Supp. 00-2).*

## Section

R13-5-701. Causes for Discipline

- R13-5-702. Disciplinary Procedures
- R13-5-703. Appeals to the Council
- R13-5-704. Rehearing of Council Decisions
- R13-5-705. Time Limits

#### ARTICLE 8. SEPARATION FROM EMPLOYMENT

*Editor's Note: Former Article 8, consisting of Sections R13-5-45 through R13-5-48, repealed by final rulemaking at 6 A.A.R. 1982, effective May 10, 2000; new Article 8, consisting of Sections R13-5-801 through R13-5-804, adopted by final rulemaking at 6 A.A.R. 2090, effective May 10, 2000 (Supp. 00-2).*

##### Section

- R13-5-801. Resignation or Retirement
- R13-5-802. Reduction-in-Force
- R13-5-803. Disability
- R13-5-804. Public Safety Personnel Retirement System Eligibility

#### ARTICLE 9. REPEALED

*Editor's Note: Article 9, consisting of Section R13-5-50, repealed effective June 7, 1978 (Supp. 78-3).*

#### ARTICLE 1. GENERAL PROVISIONS

*Editor's Note: Former Article 1, consisting of Sections R13-5-01 through R13-5-04, repealed by final rulemaking at 6 A.A.R. 1982, effective May 10, 2000; new Article 1, consisting of Sections R13-5-101 through R13-5-104, adopted by final rulemaking at 6 A.A.R. 2090, effective May 10, 2000 (Supp. 00-2).*

##### **R13-5-101. Definitions**

In this Chapter, unless otherwise specified, the following terms mean:

"Abandonment of position" means failure of an employee to report to work for a period of five consecutive working days without authorization from the employee's supervisor or manager and without good cause.

"Abilities" means general traits or capabilities an individual possesses when beginning the performance of a task.

"Agency" means any governmental organization subject to the rules of the Law Enforcement Merit System Council.

"Agency head" means the chief executive officer of any agency placed under the rules of the Law Enforcement Merit System Council

"Allocate or allocation" means the placement of a position to a classification based on the duties and responsibilities of the position.

"Annual leave" means the leave time accrued monthly by an employee based on the number of years of state service and may include holiday leave and recognition leave.

"Appeal" means an employee's request for Council review of a disciplinary action.

"Applicant" means a person who has applied for an opportunity to compete for a position.

"Appointment" means the placement of a candidate or employee into a classified position.

"Background investigation" means an inquiry to determine the character of a potential employee and may include verification and review of identity, education, employment history, personal references, credit rating, criminal history, and driving record.

"Break-in-service" means a period of absence from agency service of more than 30 consecutive working days resulting

from an employee's resignation, retirement, suspension, lay-off, or leave of absence without pay.

"Business manager" means the individual responsible for administering the affairs of the Council.

"Candidate" means an applicant who qualifies for a place on an eligibility list.

"Certified list" means the names of qualified candidates on an eligibility list who are willing to accept an appointment.

"Civilian employee" means a person who is appointed to a classification that does not require peace officer status.

"Classification" means one or more positions requiring the same minimum qualifications, knowledge, skills, and abilities, that have the same title and pay range.

"Classification date" means the effective date of an employee's appointment to a classification.

"Classification specification" means the classification's title or rank, classification code, typical duties and responsibilities, essential functions, minimum qualifications, required knowledge, skills and abilities.

"Classified position" means a position that is allocated to a classification.

"Commissioned employee" means a person who is appointed to a classification that requires officer status as defined in A.R.S. § 41-1822(A)(3).

"Compensation" means the amount of money paid for each hour worked and paid leave taken and includes time off received for overtime and holidays worked or accrued.

"Compensatory time" means leave received for overtime worked.

"Competitor" means an applicant who has met the minimum qualifications for a classification and is competing in an employment or promotional examination.

"Contested case" has the same meaning as in A.R.S. § 41-1001(4).

"Council" means the Arizona Law Enforcement Merit System Council.

"Covered position" means any position within an agency that is not appointed by the Governor or by the agency head with the concurrence of the Governor and is subject to the rules of the Council.

"Days" means full calendar days unless otherwise specified in the text of a rule.

"Demotion" means the disciplinary appointment of an employee to a classification with a lower pay range.

"Disabled person" means anyone who has a physical or mental impairment that substantially limits one or more major life activities, or who has a record of an impairment, or is regarded as having an impairment.

"Dismissal" means an agency-initiated removal of an employee from state service.

"Duties" means actions or tasks required under the circumstances by an employee's position or classification.

"Eligibility list" means the names of candidates for a classification in descending order of their final scores in preparation for a selection process.

"Employee" means a person who is appointed to a position, subject to the terms and conditions of the appointment.

"Entrance rate" means the lowest rate of pay within the pay range of a classification.

“Examination” means an evaluation or test to determine if an applicant’s qualifications comply with the specifications for a classification.

“Examination plan” means a description of each phase of an examination, the weight applied to each phase of the examination, the criteria for moving from one phase of the examination to another, and any limitations as to the number of names to appear on the eligibility list.

“Exempt employee” means an employee who is not subject to the overtime provisions of the Fair Labor Standards Act, Title 29 U.S.C. Chapter 8.

“External employment list” means an eligibility list of candidates seeking employment with an agency.

“Fair Labor Standards Act” (FLSA) means those federal statutes at 29 U.S.C. 201-219 and 251-262.

“Family Medical Leave Act (FMLA) leave” means a leave of absence, with or without pay, taken by an eligible employee under a policy adopted by an agency head from options authorized in the Family and Medical Leave Act, 29 U.S.C. 2611, et seq.

“For cause” means disciplinary action or dismissal for any reason listed in A.R.S. § 41-1830.15 or this Chapter.

“Full-time employee” means an employee appointed to work 40 hours a week.

“Grievance” means a work-related complaint by an employee, regarding classification, compensation, performance evaluation, or violation of law or Council rules.

“Holiday leave” means the leave time accrued by working a state holiday or accrued when the holiday falls on a day the employee is not scheduled to work or is on paid sick leave. Holiday leave may be included in annual leave time.

“Human Resources” means an agency department responsible for personnel administration.

“Initial probation” means a probationary period required of a new employee to an agency, an employee appointed to a classification as a special limited term employee, or an employee appointed to the classification of officer who has completed the terms of a special limited term appointment.

“Intermittent Appointment” means the appointment of an employee to work on an irregular basis.

“Internal list” means an eligibility list of internal candidates seeking promotional positions or reassignments.

“Knowledge” means a body of information, usually of a factual or procedural nature, that makes for successful performance of a task.

“Limited duty” means a short-term assignment to a physically less demanding position while the employee recovers from a temporary medical condition or disability.

“Limited-term appointment” means an appointment to a position that is designated as temporary or is not funded by the agency’s legislative appropriation.

“Limited-term employee” means an employee in a limited-term appointment who has not achieved the status of a regular employee.

“Manifest error” means an erroneous act or failure to act in administering the provisions of Article 3 of this Chapter.

“Non-exempt employee” means an employee who is subject to the overtime provisions of the Fair Labor Standards Act, Title 29 U.S.C Chapter 8.

“Overtime” means time worked by a non-exempt employee in excess of 40 hours in a work week or in excess of 160 hours in a 28-day cycle.

“Part-time appointment” means the appointment of an employee to work a schedule of less than 40 hours per week.

“Part-time employee” means an employee appointed to work less than 40 scheduled hours per week.

“Pay range” means the difference between the lowest and highest pay rates for a classification.

“Pay status” means an employee’s right to receive compensation for time worked or leave taken, except when absent on leave-without-pay or suspension without pay.

“Permanent employee” means an employee who has successfully completed an initial probation with an agency.

“Permanent status” means the employment rights achieved after satisfactorily completing the probationary period for a classification.

“Position” means a job or function, whether occupied or vacant, that is assigned a number, classification, funding source, pay range, and location code.

“Position audit” means an examination of the duties and responsibilities of a position to determine the appropriate classification.

“Probation” means a period of 12 months established for evaluating an employee’s performance to determine if the employee should be retained in a classification.

“Promotion” means the appointment of an employee to a position in another classification with a higher maximum pay level.

“Provisional appointment” means an appointment to a position in a classification for which there is no eligibility list.

“Qualifications Appraisal Board” means a group of raters who evaluate a competitor’s qualifications based upon the competitor’s written or oral responses.

“Qualifying service” means part-time or full-time service as an employee of an agency, excluding any break-in-service.

“Reallocation” means a change in the classification of a position, based upon an analysis of the duties and responsibilities of the position.

“Reappointment” means appointment to a classification previously held by a permanent status employee who was reassigned to a different classification during a reduction in force.

“Reassignment” means an appointment, at the employee’s request, to a position in a different classification with the same or a lower pay range.

“Recall” means the appointment of a former employee who was separated by a reduction in force.

“Reclassification” means the change in classification of an employee due to the employee’s movement to a position in a different classification or a reallocation of the employee’s position to a different classification.

“Recognition leave” means leave time given an employee under a formal awards program as an incentive for continued superior performance. Recognition leave is added to annual leave.

“Reduction in force” means an action taken by an agency head to involuntary transfer, reassign, or lay-off an employee as a result of a:

Legislative or executive mandate;

Reduction of funds; or

Decrease in the number of authorized positions, service area, or program responsibilities.

“Regular employee” means an employee, except a limited term-employee, who achieves permanent status.

“Reinstatement” means an appointment of a former employee to the classification or a similar classification held when the employee separated from the agency.

“Rejection of probation” means an action taken by an agency head to reassign an employee on a promotional probation or to separate an employee on an initial probation for failure to achieve and sustain the required level of performance for the classification.

“Responsibilities” means actions or tasks for which an employee is accountable in a position or classification.

“Retirement” means a voluntary separation from an agency by an employee who is eligible for an immediate disbursement from a retirement plan.

“Separation” means the close of an employee’s term of employment with an agency.

“Skill” means an individual’s level of proficiency or competency in performing a specific task.

“Special duty assignment” means an employee’s temporary assignment of more responsibilities or duties or an assignment to a position with special work or living requirements.

“Special limited term appointment” means an appointment to the classification of cadet officer or officer trainee pending the completion of requirements for the classification of officer.

“State” means the state of Arizona.

“Standard performance” means a rating given to an employee who meets the expected level of performance needed to accomplish the objectives of a position.

“Standardized scoring” means a statistical method used to ensure that the various components of a multi-phased examination receive their proper weights.

“Suspension of pay” means the disciplinary action of withholding an employee’s pay for a specified period.

“Telecommuting” means an employee performing assigned work at a location other than the employee’s regular work location.

“Time-in-grade” means time spent in a classification.

“Transfer” means the movement of an employee from the employee’s current position to another position in the same classification.

“Uncovered appointment” means an appointment to a job or function by the Governor or by an agency head with the concurrence of the Governor.

“Uncovered employee” means an employee who serves at the pleasure of the Governor.

“Veteran” means an individual who served in the armed forces of the United States and was discharged from military service under honorable conditions after more than six months of active duty and as defined in 37 U.S.C. 101 and A.R.S. § 38-492.

“Work week” means the 40-hour time period an employee works between Saturday and Friday, including any leave time taken.

#### Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 2090, effective May 10, 2000 (Supp. 00-2). Amended by final rulemaking at 7 A.A.R. 5373, effective November 6,

2001 (Supp. 01-4). Amended by final rulemaking at 9 A.A.R. 1619, effective July 5, 2003 (Supp. 03-2).

## EMERGENCY RULEMAKING

### R13-5-101. Definitions

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“Agency head” means the chief executive officer of any agency placed under the rules of the Law Enforcement Merit System Council

“Allocate or allocation” means the placement of a position to a classification based on the duties and responsibilities of the position.

“Annual leave” means the leave time accrued biweekly by an employee based on the number of years of state service and may include holiday leave and recognition leave.

“Appeal” means an employee’s request for Council review of a disciplinary action.

“Applicant” means a person who has applied for an opportunity to compete for a position.

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“Background investigation” means an inquiry to determine the character of a potential employee and may include verification and review of identity, education, employment history, personal references, credit rating, criminal history, and driving record.

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“Qualifying service” means part-time or full-time service as an employee of an agency, excluding any break-in-service.

“Reallocation” means a change in the classification of a position, based upon an analysis of the duties and responsibilities of the position.

“Reappointment” means appointment to a classification previously held by a permanent status employee who was reassigned to a different classification during a reduction in force.

“Reassignment” means an appointment, at the employee’s request, to a position in a different classification with the same or a lower pay range.

“Recall” means the appointment of a former employee who was separated by a reduction in force.

“Reclassification” means the change in classification of an employee due to the employee’s movement to a position in a different classification or a reallocation of the employee’s position to a different classification.

“Recognition leave” means leave time given an employee under a formal awards program as an incentive for continued superior performance. Recognition leave is added to annual leave.

“Reduction in force” means an action taken by an agency head to involuntary transfer, reassign, or lay-off an employee as a result of a:

- Legislative or executive mandate;
- Reduction of funds; or
- Decrease in the number of authorized positions, service area, or program responsibilities.

“Regular employee” means an employee, except a limited term-employee, who achieves permanent status.

“Reinstatement” means an appointment of a former employee to the classification or a similar classification held when the employee separated from the agency.

“Rejection of probation” means an action taken by an agency head to reassign an employee on a promotional probation or to separate an employee on an initial probation for failure to achieve and sustain the required level of performance for the classification.

“Responsibilities” means actions or tasks for which an employee is accountable in a position or classification.

“Retirement” means a voluntary separation from an agency by an employee who is eligible for an immediate disbursement from a retirement plan.

“Separation” means the close of an employee’s term of employment with an agency.

“Skill” means an individual’s level of proficiency or competency in performing a specific task.

“Special duty assignment” means an employee’s temporary assignment of more responsibilities or duties or an assignment to a position with special work or living requirements.

“Special limited term appointment” means an appointment to the classification of cadet officer or officer trainee pending the completion of requirements for the classification of officer.

“State” means the state of Arizona.

“Standard performance” means a rating given to an employee who meets the expected level of performance needed to accomplish the objectives of a position.

“Standardized scoring” means a statistical method used to ensure that the various components of a multi-phased examination receive their proper weights.

“Suspension of pay” means the disciplinary action of withholding an employee’s pay for a specified period.

“Telecommuting” means an employee performing assigned work at a location other than the employee’s regular work location.

“Time-in-grade” means time spent in a classification.

“Transfer” means the movement of an employee from the employee’s current position to another position in the same classification.

“Uncovered appointment” means an appointment to a job or function by the Governor or by an agency head with the concurrence of the Governor.

“Uncovered employee” means an employee who serves at the pleasure of the Governor.

“Veteran” means an individual who served in the armed forces of the United States and was discharged from military service under honorable conditions after more than six month’s of active duty and as defined in 37 U.S.C. 101 and A.R.S. § 38-492.

“Work week” means the 40-hour time period an employee works between Saturday and Friday, including any leave time taken.

#### Historical Note

Amended by emergency rulemaking at 10 A.A.R. 1163, effective March 4, 2004 (Supp. 04-1).

#### R13-5-102. Law Enforcement Merit System Council

- A. Authority. The statutory authority of the Law Enforcement Merit System Council is found in A.R.S. § 41-1830.11 through 41-1830.15.
- B. Decisions of the business manager are subject to review by the Council.
- C. Selection of officers. The Council shall select a Chair and Vice-chair from its members at a regular meeting in November or December of even-numbered years. The Chair and Vice-chair shall hold office for a period of two years, or until their successors are selected.
- D. Meetings. The Chair, or in the Chair’s absence the Vice-chair, shall call a meeting of the Council when a meeting is needed. The Council shall hold meetings at a location convenient to the participants whenever possible. Except for the Council’s executive sessions, the Council’s meetings shall remain open to the public and the Chair shall give interested parties an opportunity to be heard.
- E. Quorum. Two members are required for a quorum, and concurring members must equal a majority of those voting in order to take action.

## Law Enforcement Merit System Council

- F. Minutes. The Council shall keep minutes of its proceedings and official actions. The Council's records and minutes are open to public review during normal business hours.
- G. Council rules. An agency shall provide employees with a copy of the Council's rules.

**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 2090, effective May 10, 2000 (Supp. 00-2). Amended by final rulemaking at 9 A.A.R. 1619, effective July 5, 2003 (Supp. 03-2).

**R13-5-103. Personnel Administration**

- A. Separation of powers. The agency head shall staff and maintain a human resources function responsible for personnel administration consistent with these rules and under the jurisdiction of the Council as provided for in statute and this Chapter. The business manager shall provide oversight to Human Resources in administering this Chapter.
- B. Personnel records. Human Resources shall maintain employment records on each agency employee, including the employee's:
  1. Employment application;
  2. Examination scores;
  3. Signed oath of office;
  4. Date of initial appointment;
  5. Other appointment orders;
  6. Performance reports;
  7. Transfers;
  8. Commendations;
  9. Leaves-of-absence without pay;
  10. Disciplinary actions;
  11. Separation from the agency;
  12. Reinstatement to the agency; and
  13. Any other appropriate employment records.
- C. Confidentiality. Human Resources shall preserve the confidentiality of personnel records. Persons authorized to access personnel records are:
  1. The employee;
  2. A person authorized by the employee;
  3. A person with an official court order;
  4. A person authorized by the agency head;
  5. A person authorized by the chair of the Council; and
  6. A law enforcement agency with authorized access to such records under A.R.S. § 41-1828.01.

**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 2090, effective May 10, 2000 (Supp. 00-2).

**R13-5-104. General Information**

- A. Delegating authority. The agency head may delegate to other agency personnel the authority and duties imposed by this Chapter upon the agency head, unless otherwise prohibited by statute or rule.
- B. Reports. The agency head shall provide information requested by the Council on matters relating to this Chapter. The agency shall present the information in the format requested by the Council.
- C. Restricted information. The Council shall safeguard confidential information given to the Council by any employee or former employee. The Council shall not allow inspection of such information except under conditions prescribed by the Council.
- D. Service of notice. The agency or the Council shall serve notice upon an employee personally or by the U.S. Postal Service. Postal service shall be made by certified mail, return receipt requested, to an employee's last known home or business

address, and is complete upon mailing. Service as provided for in this Section is required for the following:

1. Notice of an employee's rejection from probation;
  2. Notice of a charge in a disciplinary proceeding;
  3. Notice of an employee's suspension, layoff, or dismissal; and
  4. Other notices required by these rules.
- E. Proof of service. The agency shall provide proof of service by affidavit.
  - F. Availability of funds. Reference in these rules to employee pay is contingent upon availability of funds, as determined by the agency head.
  - G. Compliance with federal rules and regulations. Any federal regulation or standard governing the granting of federal funds to an agency under the Law Enforcement Merit System Council takes precedence over any of these rules which conflict with the control and expenditure of federal funds.
  - H. Validity and separation. If any provision or application of the rules in this Chapter is held invalid by a court of competent jurisdiction, the remainder of the rules in this Chapter and application of the rules to other persons or circumstances are not affected by the court decision.
  - I. Equal employment. The Council, the agency head, and agency employees shall not discriminate in any aspect of employment on the basis of race, color, religion, sex, national origin, age, disability, or pregnancy.
  - J. Accommodation. The Council and the agency head shall make reasonable accommodations to enable a person with a disability to use agency facilities, services, and programs. A person requesting accommodation shall notify the agency or the business manager as soon as reasonably possible in order to allow the agency time to arrange the accommodation.

**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 2090, effective May 10, 2000 (Supp. 00-2).

**ARTICLE 2. CLASSIFICATION AND COMPENSATION**

*Editor's Note: Former Article 2, consisting of Sections R13-5-10 and R13-5-11, repealed by final rulemaking at 6 A.A.R. 1982, effective May 10, 2000; new Article 2, consisting of Sections R13-5-201 through R13-5-204, adopted by final rulemaking at 6 A.A.R. 2090, effective May 10, 2000 (Supp. 00-2).*

**R13-5-201. Classification**

- A. Classification Plan. The Council shall adopt and revise the classification of positions for use by an agency. Collectively, classifications adopted by the Council comprise the classification plan of the Council. Each classification in the classification plan includes:
  1. A descriptive title;
  2. A description of the scope of duties, typical responsibilities, and essential functions;
  3. The minimum qualifications required of an applicant; and
  4. A determination of non-exempt or exempt status under the Fair Labor Standards Act.
- B. Classification Specifications. The business manager shall document the date of adoption and the latest revision of each classification specification, and shall maintain the master set of all approved classification specifications. Human Resources shall also maintain a set of all approved classification specifications. Copies of a classification specification are open for inspection by an employee and the public during normal business hours.
- C. Allocating positions. The Council shall allocate a position to the appropriate classification in the Classification Plan. The

Council shall allocate a position to the same classification when:

1. The duties and responsibilities are substantially similar;
  2. The same education, experience, knowledge, skills, and abilities required are substantially similar;
  3. The examinations used in choosing qualified candidates are substantially similar; and
  4. The pay range may be applied equitably to all positions in the classification.
- D.** Compensation Maintenance Review Plan: The Council shall adopt and revise guidelines for a classification and compensation maintenance review plan. An employee shall be placed in a classification in accordance with this plan.
- E.** Assignment. Except in an emergency, or as otherwise provided by this Chapter, an agency shall not assign an employee to perform the duties of any classification other than the classification to which the employee's position is allocated.
- F.** Modification. The Council may establish a new classification and revise or abolish an existing classification. The Council shall decide when a position in an affected classification needs to be reallocated, taking into account the classification duties, responsibilities, and related criteria. The Council shall also determine the probationary or permanent status of an employee affected by reallocation.
- G.** Reviewing allocations. An employee affected by reallocation of the employee's position shall have the opportunity to be heard by the Council under R13-5-602.
- H.** Changes in positions. The business manager shall reallocate an existing position when a material and permanent change occurs in the duties and responsibilities of the position.
1. If an employee is in a position that is reallocated, an agency shall reclassify the employee in that position if the employee:
    - a. Has been in the position at least six months;
    - b. Has occupied the position during the change in duties; and
    - c. Meets the minimum qualifications of the new classification.
  2. A position shall not be reallocated while undergoing a classification and compensation review, except that the Council may reallocate a position that is undergoing a classification and compensation review when an agency head can show that the reallocation is necessary for the continued operation of the agency.
- I.** Time in grade. The Council shall credit an employee reclassified as a result of a reallocation with time-in-grade as follows:
1. The employee is credited with time-in-grade for the time spent in the position if no significant changes are made to the duties and responsibilities of the position to qualify for the higher classification and if the employee continues to perform the duties previously performed in the position.
  2. Time-in-grade status is calculated on the basis of actual hours worked.
- J.** New positions. An agency head shall establish positions in the agency as authorized by law, subject to budgetary authorization and availability of funds. An agency head shall notify the Council when a new position is established. The Council shall allocate a new position to the appropriate classification.
- K.** Classification titles. An agency shall use a classification title approved by the Council in all communications regarding personnel, budget, and financial records.

#### Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 2090, effective May 10, 2000 (Supp. 00-2). Amended by final rulemaking at 9 A.A.R. 1619, effective July 5, 2003 (Supp. 03-2).

#### R13-5-202. Compensation

- A.** Compensation plan. The Council shall adopt compensation levels for all classifications. Collectively, compensation levels adopted by the Council comprise the compensation plan of the Council. An agency shall periodically revise the compensation plan for a covered position, based on the principle that like salaries are paid for comparable duties and responsibilities, and shall submit the agency's recommendations to the Council for approval.
- B.** Hearings. If an agency recommends a change in a pay range, the Council shall grant any adversely affected employee an opportunity to be heard.
- C.** Pay Levels. The Council shall specify all pay levels. The Council may also establish more than one pay range, hourly rate, or method of compensation for classifications and positions with unusual hours, conditions of work, or when necessary to compete with other employers.
- D.** Lack of Funds. If an agency lacks sufficient funds to pay an employee's salary, the agency shall consider an alternative method of reducing costs, including those described in R13-5-802(B). If an alternative method is not adequate or available, the agency shall assign an employee to a leave of absence without pay under the layoff procedure in R13-5-802. The agency shall recall the laid off employee when sufficient funds become available.
- E.** Entrance rate. The minimum pay rate for each classification is the entry rate, unless otherwise provided in these rules. The agency shall maintain a record of each employee's employment date and entrance into a classification.
- F.** Special pay adjustments. When making an appointment, promotion, reinstatement, recall, transfer, reclassification or reassignment, an agency head may authorize pay anywhere within the pay range to meet recruiting and retention needs, and to give credit for prior agency service.
- G.** Rate above maximum. When a position is reallocated resulting in the reclassification of an employee to a lower classification or the pay range of a classification is reduced, the agency head may authorize a pay rate for the employee above the maximum for the classification. While an employee's pay remains above the maximum rate for the employee's classification, the employee shall not receive any pay increases except those required by law.
- H.** Rate on movement to a classification with a lower pay range. An employee who accepts reassignment to a classification with a lower pay range may receive a rate above the minimum, if authorized by the agency head. The agency shall then establish a new classification date for the employee.
- I.** Rate on movement to a classification with the same range. When an employee moves to another classification with the same range, the employee shall retain the employee's current rate of pay.
- J.** Rate on movement to a classification with a higher pay range. When an employee moves to another classification with a higher pay range, the employee shall receive pay at the entry level of the new classification. If the employee's current pay is greater than the entry level of the new classification, the employee shall receive no less than a \$500 annual increase. In no case shall an employee's salary exceed the maximum for the new classification.
- K.** Rate upon reinstatement. Upon reinstatement, a former employee shall receive the entrance rate for the employee's classification, unless the agency head authorizes a higher rate or as directed by the Council following a disciplinary hearing.
- L.** Rate upon recall. A former employee who is recalled after a layoff shall receive the same pay rate as that held before the layoff. If the Council approved a general pay adjustment or



classification adjustment while the employee was on leave of absence without pay, the employee shall receive the adjustment.

- M.** Automatic pay adjustment. A classification pay range adjustment applies equally to all employees within the classification and does not alter an employee's classification date for a pay adjustment.

#### Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 2090, effective May 10, 2000 (Supp. 00-2).

#### R13-5-203. Pay Administration

- A.** Base pay adjustment. An agency head may modify base pay by adding cost-of-living and other adjustment appropriated by the state Legislature. An agency head may also request that the Council revise the compensation plan to include other changes to base pay, as needed. After base pay adjustments are completed, an agency head may add special duty pay before computing an employee's pay rate.
- B.** Appropriated pay adjustment. Upon approval by the Council the agency head may apply some or all the appropriated funds to the compensation plan, if the appropriation bill does not include specific allocation instructions for an employee pay raise, or if the instructions are not applicable to the agency.
- C.** Special duty assignment. An agency head may supplement the base pay of an employee on a special duty assignment. Time spent on a special duty assignment counts toward an employee's length of service. An employee may receive special duty pay only for the period when the employee performs the required duties of the special duty assignment.
- D.** Return from special duty assignment or uncovered appointment. When an employee returns to a regular appointment from a special duty assignment or an uncovered appointment, the agency shall return the employee's pay to the employee's base pay earned before being assigned to a special duty assignment or uncovered appointment. If general pay adjustments or classification adjustments are approved while an employee is on a special duty assignment or serving in an uncovered appointment, the employee shall receive the adjustments.
- E.** Overtime pay. The agency head shall adopt an overtime policy and procedure consistent with federal regulations under the Fair Labor Standards Act, Arizona Revised Statutes, and this Chapter. Compensatory leave is accrued and used as provided by R13-5-505.

#### Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 2090, effective May 10, 2000 (Supp. 00-2).

#### R13-5-204. Work Hours and Work Options

Work hours and work breaks. An agency head may establish different working hours for certain work groups and shifts in order to meet the needs of the agency. In doing this, the agency head should consider such factors as clean air directives, telecommuting, and flexible work hours. An agency head shall establish a policy for "on-duty" and "off-duty" time consistent with federal regulations under the Fair Labor Standards Act, Arizona Revised Statutes, and this Chapter and provide procedures for recording time worked and leave taken by an employee.

#### Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 2090, effective May 10, 2000 (Supp. 00-2).

### ARTICLE 3. EMPLOYMENT

*Editor's Note: Former Article 3, consisting of Section R13-5-15, repealed by final rulemaking at 6 A.A.R. 1982, effective May 10, 2000; new Article 1, consisting of Sections R13-5-301 through R13-*

*5-317, adopted by final rulemaking at 6 A.A.R. 2090, effective May 10, 2000 (Supp. 00-2).*

#### R13-5-301. Recruitment

- A.** Recruiting an external applicant. When authorized by an agency head, Human Resources shall seek qualified applicants through open recruiting and competitive employment opportunities. Human Resources shall publish and distribute job announcements that include:
1. The classification title and pay;
  2. The minimum qualifications;
  3. The location of the assignment, if known;
  4. Special requirements, if any;
  5. Location of forms; and
  6. The application deadline.
- B.** Applications. Human Resources shall establish procedures for distributing and receiving an application. Human Resources shall screen all applications and may reject any that are incomplete, illegible, or received after the deadline.
- C.** Disqualifying an applicant or candidate. An agency head or the agency's Human Resources unit may disqualify any applicant or candidate based upon information in an application, statements made by the applicant's references, and a background investigation by the agency. The agency shall also disqualify any applicant who:
1. Lacks the required qualifications for the classification;
  2. Was convicted of a disqualifying offense;
  3. Was dismissed by a previous employer for a reason that is cause for dismissal from the agency;
  4. Practiced deception or failed to give complete and accurate information; or
  5. Failed to meet selection guidelines as established by the Council.
- D.** Reapplying. A candidate who fails any portion of the background investigation, with the exception of medical only, shall be precluded from reapplying for a period of two years from the date of disqualification.
- E.** Notifying an applicant. After completing a qualification review, Human Resources shall notify an applicant of the agency's acceptance or rejection of the employee's application.
- F.** Retaining an application. Human Resources shall retain all applications under a records retention and disposition schedule approved by the Department of Library, Archives, and Public Records.

#### Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 2090, effective May 10, 2000 (Supp. 00-2).

#### R13-5-302. Examinations

- A.** Examination plan. Human Resources shall develop an examination plan for each selection process. The business manager shall review and approve each examination plan. An applicant for the examination shall be notified of the examination plan. Once an examination begins, changes will not be made to the plan. If an examination plan needs to be altered, Human Resources shall terminate the current examination and initiate a new examination.
- B.** Examination guidelines. Human Resources shall obtain or develop a valid examination for each classification, and establish a weight and minimum qualifying requirement for each phase of the exam. The business manager shall review and approve each examination before the examination is administered. A competitor shall achieve the minimum requirements on each phase of an examination before progressing to the next phase. A competitor shall achieve a passing score on each phase before qualifying for a classification.

- C. Notifying an applicant. Human Resources shall notify a qualified applicant of the following information:
  - 1. The date, time, and location of each examination;
  - 2. The number of phases included in the examination;
  - 3. Other pre-employment requirements; and
  - 4. How to request special accommodations for persons with a disability.
- D. Type and content of examination. Human Resources shall ensure that each examination is valid, non-discriminatory, and fairly and accurately measures an applicant's ability to perform the functions and duties listed in the classification specifications.
- E. Conducting an examination.
  - 1. Human Resources, or a person designated by Human Resources, shall administer the examination.
  - 2. The business manager shall oversee all elements of, but not actively participate in, the examination process to ensure that each component is administered, scored, evaluated, and interpreted fairly and accurately.
  - 3. Human Resources shall permanently disqualify an applicant from taking any employment or promotional examination if it has been established that the applicant is guilty of copying, collusion, unauthorized access, or other acts of dishonesty relating to an official examination.
- F. Scoring an examination. Human Resources shall oversee the scoring of the examination.
  - 1. Human Resources may use a rater from within or outside of an agency to score an examination. Human Resources shall select an examination rater who is qualified to appraise the education, experience, and personal qualifications of a competitor.
  - 2. Human Resources shall provide a rater with scoring guidelines and exam answer keys to ensure consistency of scoring, evaluation, and interpretation of test results. All phases of an examination shall have predetermined and clearly defined scoring criteria.
  - 3. If a member of a qualifications appraisal board gives a competitor an average rating below the passing level, but a majority of the members give the competitor a passing score, the competitor shall receive a minimum rating of "pass." If a majority of the qualifications appraisal board gives the competitor a score below the passing level, the competitor shall be disqualified, even if the competitor's average score is above the passing level.
  - 4. Human Resources shall apply standardized scoring to a multi-phased examination when the number of competitors is five or more.
- G. Validating an examination result. If Human Resources finds that an examination is incorrectly scored or that a portion of an examination is defective, Human Resources shall:
  - 1. Correct all scoring errors, or
  - 2. Eliminate the defective portion of an examination and revise the score of each competitor.
- H. Examination results notification. Human Resources shall mail notification of examination results to each competitor. Within 10 business days after the examination results are mailed, a competitor may file with the business manager a written request that the business manager review all examination questions, answers, scoring methods, procedures, and decisions. A competitor requesting a business manager's review shall outline the specific areas the competitor believes are in error.
  - 1. If the business manager's review discloses an error, the business manager shall return the examination to Human Resources for correction.
- 2. If an error affects the scores of other competitors, Human Resources shall revise all incorrect scores.
- 3. If the business manager determines the error is not correctable and the defective portion of the exam is critical to the examination process, Human Resources shall re-administer that portion of the examination under guidelines provided by the business manager.
- I. Retaining test scores. Human Resources shall retain all examination materials and test scores under a records retention and disposition schedule approved by the Department of Library, Archives, and Public Records.
- J. Correcting a manifest error. The business manager shall correct a manifest error that occurs in developing, using, or maintaining an eligibility list. The business manager shall not change the effective date of an eligibility list to correct a manifest error discovered after posting the list.

#### Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 2090, effective May 10, 2000 (Supp. 00-2). Amended by final rulemaking at 7 A.A.R. 5373, effective November 6, 2001 (Supp. 01-4). Amended by final rulemaking at 9 A.A.R. 1619, effective July 5, 2003 (Supp. 03-2).

#### R13-5-303. Applicant Preference Points

If an applicant receives a passing score on an examination and has qualified for placement on an employment list, Human Resources shall add the preference points authorized by A.R.S. § 38-492 to the applicant's final score, provided the applicant submits official documentation of eligibility for preference points. Preference points shall not apply to a promotional examination.

#### Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 2090, effective May 10, 2000 (Supp. 00-2).

#### R13-5-304. Employment

- A. Establishing an employment eligibility list. Human Resources shall develop, and the business manager shall establish, employment eligibility lists for various classifications, as needed. For each list, Human Resources shall arrange the names of competitors in descending order of the competitors' final examination scores.
- B. Establishing a list in case of ties. If two or more competitors receive the same rating in an examination, the competitor's names shall be placed on the list according to their respective ratings on the portion of the examination with the greatest weight. If a tie still exists, the names shall be placed on the list at the same position, in alphabetical order.
- C. Reviewing the employment eligibility list. Human Resources shall submit an employment eligibility list to the business manager for approval and certification.
- D. Notification to candidate. When an employment eligibility list is certified by the business manager, Human Resources shall notify a candidate of the candidate's relative ranking on the list.
- E. Duration of an eligibility list. Each new or merged list remains in effect for 18 months from its effective date. Before a list expires, the Council may cancel the list.
  - 1. Restoring a list. If a need arises and a current list is not available, the Council may restore a list that expired or was canceled within the past six months.
  - 2. Merging a list. Except for the classifications described in subsection (E)(3), if three or fewer candidates remain on an existing list, Human Resources may establish a new list and merge the existing list with the new list. When the merged list is established, Human Resources shall rearrange the names in descending order of the candidates'

final scores and notify each candidate of the candidate's relative ranking. Human Resources shall remove a candidate's name from the new list on the expiration date of the candidate's original list.

3. Conducting continuous or periodic testing. If the Council determines that a classification requires continuous or periodic testing, the business manager may authorize Human Resources to conduct examinations regardless of the existence of an employment list in that classification. Human Resources shall merge the names of candidates tested with names on the existing employment list for that classification as described in subsection (E)(2).
4. Retesting a merged candidate. If another examination for the same classification is held before the prior list expires, a merged candidate from the prior list may take the examination. If the candidate passes the test, Human Resources shall place the candidate on the list according to the new score. The candidate shall remain on the list for its duration.

**F.** Removing a candidate. The business manager shall remove a candidate from an eligibility list for any of the following reasons:

1. Human Resources is unable to contact the candidate by phone or mail;
2. The Council abolishes the classification for which the list was developed; or
3. The candidate withdraws from the selection process.

#### Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 2090, effective May 10, 2000 (Supp. 00-2). Amended by final rulemaking at 6 A.A.R. 4495, effective November 7, 2000 (Supp. 00-4). Amended by final rulemaking at 7 A.A.R. 5373, effective November 6, 2001 (Supp. 01-4). Amended by final rulemaking at 9 A.A.R. 1619, effective July 5, 2003 (Supp. 03-2).

#### R13-5-305. Promotion

- A.** Announcing a promotional examination. Human Resources shall publish an agency-wide announcement when initiating development of an internal eligibility list. An announcement shall include the information in R13-5-301(A).
- B.** Applying for promotion. An employee may compete for a place on an internal eligibility list by submitting an internal application form to Human Resources by the application filing deadline.
  1. An employee is eligible to take a promotional examination if the employee:
    - a. Satisfactorily completes initial probation by the application filing deadline;
    - b. Meets or exceeds the minimum qualifications for the classification; and
    - c. Receives a standard or above standard performance evaluation for the latest rating period.
  2. An employee who participates in developing an examination for an internal classification is not eligible to take the examination for that classification.
- C.** Processing an application. Human Resources shall process an application consistent with the procedures in R13-5-301(B), (C), and (F).
- D.** Business manager review. Within 10 days after a notice of rejection of an application has been mailed to the employee, an employee may request that the business manager review a rejected application. The business manager may review and overturn or concur with the decision of Human Resources. An employee may also request that the Council review the business manager's decision.

**E.** Promotional examination. Human Resources shall conduct a promotional examination consistent with R13-5-302. An employee eligible to take a promotional examination shall notify the employee's supervisor of the time and date of the examination as soon as it is known. A supervisor shall authorize an employee to participate in a promotional examination while on duty.

**F.** Inspecting an examination. Within 10 days after taking a written promotional examination, a competitor may request permission from the business manager to inspect a copy of the exam for the purpose of identifying an item the competitor believes is incorrect.

1. The business manager shall arrange an inspection of an exam during business hours, in an agency office, and in the presence of the business manager or an employee authorized by the business manager.
2. The competitor shall advise the business manager of the questions or answers challenged.
3. The competitor may make notes concerning items the competitor plans to challenge but shall not otherwise copy a question in the examination.
4. The competitor may file a written notice with the business manager questioning an item in the examination and explaining the basis for any challenge. The business manager shall process the challenge consistent with the procedure in R13-5-302.

**G.** Scoring and validating an examination. Human Resources shall score and validate an examination under R13-5-302(F) and (G).

**H.** Inspection of examination results. Within 10 days after notice of the results of an examination, a competitor may request to review the competitor's examination with the business manager, or an employee authorized by the business manager.

1. The business manager or the authorized employee shall oversee the competitor's examination inspection.
2. An employee shall not copy questions or answers, nor make any alterations to the examination papers.
3. Only the Council, business manager, competitor, competitor's attorney, and the agency head may inspect a competitor's examination.
4. Within 10 days of a review, a competitor may file a written notice with the business manager questioning examination results on the basis of irregularity, bias, fraud, or scoring error, and explaining the basis for any challenge. The business manager shall correct any error in the scoring of the examination.

**I.** Grievance of business manager's decision. An employee who is aggrieved by a decision of the business manager may grieve the decision to the Council. A grievance of the business manager's decision shall be filed with the Council office no later than 20 days after notice of the decision is given. The Council shall review the grievance as outlined in R13-5-602 (E).

**J.** Military leave. Human Resources shall allow an employee returning from military leave to take any examination that the employee could have taken if military service had not intervened. If the employee passes the examination, the business manager shall add the employee's name to the appropriate internal eligibility list.

**K.** Establishing an internal list. Human Resources shall prepare an internal list for a promotional classification with competitor's names arranged in descending order of the competitor's final score.

**L.** Establishing a list in case of a tie. If two or more competitors receive the same rating in an examination, the competitor's names shall be placed on the list according to their respective ratings on the portion of the examination with the greatest

weight. If a tie still exists, the names shall be placed on the list at the same position, in alphabetical order.

- M.** Approval of list. Human Resources shall submit the internal list to the business manager for approval and certification.
- N.** Notifying a candidate. When the list is certified by the business manager, Human Resources shall notify a candidate of the exam results and the candidate's relative ranking on the list.
- O.** Duration of a list. A list shall remain in force consistent with R13-5-304(E).
- P.** Revising a classification. If the Council orders that a classification be revised, Human Resources shall establish a new list for the revised classification and cancel any existing list.
- Q.** Removing a candidate from an internal list. The business manager shall remove a candidate from an internal list if:
  1. The candidate fails to maintain required qualifications for the classification,
  2. The candidate resigns from agency service, or
  3. The internal list expires.
- R.** Promotion to the classification of officer. An employee shall be promoted to the classification of officer upon certification by the Peace Officer Standards and Training Board.
- S.** Promotion for a commissioned classification. An agency may establish a job-interest card system for a promotion in a commissioned classification. If a candidate submits a job-interest card indicating interest in only a specified position, that candidate shall not be considered for any other position except as outlined in this subsection.
  1. An agency head shall offer a promotional position to a candidate ranking highest on the promotional eligibility list who filed a job-interest card for that position.
  2. If there are no job-interest cards for a specific position, an agency head shall offer a promotional position to the candidate ranking highest on the promotional eligibility list. If the employee highest on the promotional list declines the promotion, the agency head shall offer the position to the employee next highest on the list until all candidates on the promotion list are offered the position.
  3. For a location that has two or fewer positions, an agency head may appoint any promotional candidate residing in that location.
  4. If a candidate declines an offer of promotion, the business manager shall move that candidate's name to the bottom of the promotional eligibility list.
  5. If all candidates on a promotional eligibility list decline a promotion, an agency head shall make a second offer to all candidates on the list.
  6. If all candidates on the list decline the second offer, the business manager shall cancel the list. Human Resources shall then initiate a process to create a new list for the classification.
- T.** Promotion for a civilian classification. Civilian promotions are conducted under R13-5-308 and R13-5-309.

#### **Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 2090, effective May 10, 2000 (Supp. 00-2). Amended by final rulemaking at 7 A.A.R. 5373, effective November 6, 2001 (Supp. 01-4).

#### **R13-5-306. Reassignment**

- A.** Reassignment application. An employee may request reassignment to a different classification with the same or a lower pay range by submitting an application to Human Resources documenting the employee's qualifications. An application for reassignment can be obtained from Human Resources.

- B.** Qualification screening. Human Resources shall determine whether the employee meets the minimum qualifications of the classification. Unless the employee has previously held permanent status in a classification, Human Resources shall require the employee to pass an examination for the requested classification. Any employee required to test may request an examination review under R13-5-305(D), (F), and (H).
- C.** Eligibility list. If the employee qualifies, Human Resources shall place the candidate's name on an appropriate internal eligibility list under R13-5-305 (J) and (K).

#### **Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 2090, effective May 10, 2000 (Supp. 00-2).

#### **R13-5-307. Reinstatement**

- A.** Reinstatement list. An employee who separates from an agency may apply for reinstatement within one year. Upon approval of the agency head, Human Resources shall place the former employee's name on a reinstatement list for the last classification held by the employee and any previous or closely related classifications for which the employee is qualified.
- B.** Duration of the list. A reinstatement list shall remain in force for a maximum of one year. At the agency head's request, the Council may extend the duration of the list for six months periods at a time.
- C.** Background investigation. All candidates for reinstatement are required to pass a background investigation.

#### **Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 2090, effective May 10, 2000 (Supp. 00-2). Amended by final rulemaking at 6 A.A.R. 4495, effective November 7, 2000 (Supp. 00-4).

#### **R13-5-308. Hiring Preference**

- A.** Order of lists. When an agency head authorizes filling a vacant position, Human Resources shall notify the manager who is filling the vacancy of any employees requesting a transfer to the vacant position. After considering a transfer request, or if there are none, the manager may request a list of candidates for the position from available eligibility lists in the following order of preference:
  1. Reappointment list,
  2. Reassignment list,
  3. Recall list,
  4. Internal list,
  5. Reinstatement list, and
  6. Employment list.
- B.** Referring candidates. Except for the classification of cadet officer, Human Resources shall contact eligible candidates in the order of preference specified in subsection (A) to be interviewed. Candidates shall advise Human Resources if they wish to be interviewed.
  1. If there is one vacant position, Human Resources shall refer the three interested candidates standing highest on each of the lists. Human Resources may refer fewer than three names if there are fewer than three candidates on the lists.
  2. For multiple vacancies, Human Resources shall refer one more candidate for each additional vacant position from the lists.
  3. If a list is not available, the business manager may refer candidates from lists of the same or higher level as the position being filled.
- C.** Referring candidates for cadet officer. Human Resources shall make a job offer conditional on passing a background investi-

gation to as many of the highest ranking candidates on the list as Human Resources deems necessary to fill existing positions.

- D. Canceling a list. If all candidates on the promotional eligibility list advise Human Resources that they are not interested in a position, Human Resources shall make a second offer to all candidates on the list. The second offer shall include a notification to each candidate that if all candidates decline the position, the list will be cancelled. If all candidates on the list decline the second offer, the business manager shall cancel the list. Human Resources shall then initiate a process to create a new list for the classification.

#### Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 2090, effective May 10, 2000 (Supp. 00-2). Amended by final rulemaking at 9 A.A.R. 1619, effective July 5, 2003 (Supp. 03-2).

#### R13-5-309. Selection

- A. Selecting a candidate. The manager shall follow the interview and selection policy provided by Human Resources.
- B. Interviewing. If the hiring manager does not select a transferee or the top candidate from the certified list, the hiring manager shall interview all candidates requesting a transfer, and at least one but no more than three candidates from each certified list.
- C. Additional names. If the hiring manager rejects all initial candidates, the hiring manager shall document job-related reasons for their rejection and submit the interview forms to Human Resources. If Human Resources agrees with the hiring manager's reason for rejection, Human Resources shall refer up to three more names from the lists.
- D. Selection of cadet officer. A candidate receiving a job offer, who is not disqualified during the background investigation, shall be appointed to the classification.
- E. Documenting the selection. Upon making a selection, the hiring manager shall complete the documentation and return all interview and selection materials to Human Resources.
- F. Record retention. Human Resources shall retain interview and selection records under a records retention and disposition schedule approved by the Department of Library, Archives, and Public Records.

#### Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 2090, effective May 10, 2000 (Supp. 00-2). Amended by final rulemaking at 9 A.A.R. 1619, effective July 5, 2003 (Supp. 03-2).

#### R13-5-310. Pre-employment Processing

- A. Pre-employment screening. Before appointment to a position, a candidate shall successfully pass a background investigation and any other examination considered appropriate by the agency head.
- B. Withdrawal from selection process. If a candidate elects to withdraw from the selection process, Human Resources shall document the candidate's withdrawal.
- C. Failing to successfully complete an examination. If a candidate fails to successfully complete any of the requirements in subsection (A), Human Resources shall document the failure and disqualify the candidate.
- D. Final processing. When a candidate passes all the pre-employment requirements, Human Resources shall prepare and submit the appropriate forms to the agency head for approval.
- E. Declining position offers. Human Resources may remove from a certified list any candidate who declines an appointment offer.

- F. Requesting accommodation. If a selected candidate requests a special accommodation under state or federal law, Human Resources shall confer with appropriate personnel to determine if a reasonable accommodation is possible.

#### Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 2090, effective May 10, 2000 (Supp. 00-2).

#### R13-5-311. Appointments

- A. Required oath of office. An appointee shall read the oath described in A.R.S. § 38-231(G) and agree in writing to uphold the office before the agency head, or a designee authorized to administer an oath.
- B. Refusal to take oath. Any person who refuses or fails to take the oath required by this Section within the time provided shall forfeit the right to the position.
- C. Filing of oath. When the oath is signed by an appointee, Human Resources shall file the oath in the employee's personnel file.

#### Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 2090, effective May 10, 2000 (Supp. 00-2).

#### R13-5-312. Limited-Term Appointments

- A. Limited-term position. A limited-term position is either temporary or funded from a source outside an agency's regular legislative appropriation. An appointee to a limited-term position shall, after successfully completing initial probation, have the rights of a permanent employee, except for the opportunity to compete for retention against regular employees in a case of layoff due to a reduction-in-force.
- B. Certifying a candidate. An eligible candidate is certified based upon the candidate's position on the eligibility list and the candidate's willingness to accept a limited-term appointment.
- C. Separation. The agency may separate a limited-term employee at any time before expiration of the appointment by notifying the employee in writing. If a provisional or an intermittent employee remains employed in the same classification, the agency shall not separate a limited-term employee except for reasons listed in A.R.S. § 41-1830.15.
- D. Effect of transfer or promotion.
  1. A limited-term employee who transfers or promotes from a limited-term position to a non-limited-term position shall obtain the rights of a permanent employee. Time spent in a limited term position is counted as service time in cases of layoff due to a reduction-in-force.
  2. An employee who transfers or promotes from a non-limited-term position to a limited-term position shall retain the rights of a permanent employee. Time spent in a limited-term position is counted as service time in case of layoff due to a reduction-in-force.
- E. Special limited term. A candidate for the classification of officer may be employed in a special limited term position as a cadet officer or officer trainee for a maximum of three years pending completion of requirements for the classification of officer.
  1. Cadet officer. A candidate who is appointed to attend an agency's training academy shall be employed as a cadet officer. Upon successful completion of the training academy and certification as a peace officer by the Peace Officers Standards and Training Board, the candidate shall be reclassified to the classification of officer.
  2. Officer trainee. A candidate who is not appointed to a training academy shall be employed as an officer trainee if:

- a. The candidate is between 18 and 21 years of age. If while employed as an officer trainee, the candidate reaches the age of 21 years, and has achieved a performance rating of standard or above for the prior year, the employee shall be promoted to the classification of cadet officer when an opening in the training academy is available.
- b. The candidate is 21 years of age or older, is on the employment list for the classification of cadet officer, and is waiting for an opening in the agency's training academy. The candidate shall remain on the cadet officer employment list and shall be appointed to the classification of cadet officer when an opening in the training academy is available.

**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 2090, effective May 10, 2000 (Supp. 00-2). Amended by final rulemaking at 7 A.A.R. 5373, effective November 6, 2001 (Supp. 01-4).

**R13-5-313. Provisional appointments**

- A. Provisional appointment. When no employment or internal list is available, an agency head may make a provisional appointment. A provisional appointment continues only until an eligibility list is certified by the business manager.
- B. Length of appointment. Within 12 months of a provisional appointment, Human Resources shall conduct an appropriate examination and establish an eligibility list for a classification with a provisional appointee.
- C. Separation. Upon separation from a provisional appointment, an employee shall have no right of appeal to the Council for review of the agency head's action.

**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 2090, effective May 10, 2000 (Supp. 00-2).

**R13-5-314. Intermittent Appointment**

- A. Intermittent position. When an agency head needs a person to work on an intermittent or irregular basis, the agency head shall request a list of candidates for intermittent appointment. An applicant who meets the minimum qualifications and indicates willingness to accept the terms of intermittent employment shall be placed on an eligibility list for selection to an intermittent position.
- B. For the purposes of this Section, an intermittent employee means an employee in an intermittent position.
- C. Establishing an intermittent employment list. The business manager shall establish an intermittent employment list, as follows:
  1. An employee who leaves an agency may be placed on an intermittent employment list for a classification the employee previously held. The employee shall not be required to take an examination to be placed on an intermittent employment list if the request is received within one year from the time the employee left that classification and the employee's last evaluation in that classification was standard or above.
  2. An employee who is reassigned or promoted to another classification may be placed on an intermittent employment list for the classification previously held. The employee shall not be required to take an examination to be placed on an intermittent employment list if the request is received within one year from the time the employee left that classification and the employee's last evaluation in that classification was standard or above.

3. The business manager shall establish an intermittent employment list in the same manner as an employment eligibility list.

- D. Benefits for an intermittent employee. An employee in an intermittent position shall not receive the benefits afforded a full or part-time employee. An intermittent employee shall not acquire annual or sick leave benefits and shall not receive credit for time in the intermittent position for the purposes of pay adjustments in the classification.
- E. Eligibility for promotion. An intermittent employee shall not compete in a promotional process.
- F. Rate of pay. The agency head shall determine the rate of pay for an intermittent employee.

**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 2090, effective May 10, 2000 (Supp. 00-2). Amended by final rulemaking at 7 A.A.R. 5373, effective November 6, 2001 (Supp. 01-4).

**R13-5-315. Employee Conduct**

- A. Standards of conduct. An employee shall perform the duties and responsibilities of the employee's assigned classification and position. An employee shall comply with applicable laws, rules, and agency policy. An employee shall demonstrate respect, fairness, diligence, impartiality, courtesy, efficiency, and integrity in all contacts with the public and other employees.
- B. Fitness for duty. If a supervisor has reasonable doubt that an employee is psychologically or physically able to perform the essential duties of the position, the supervisor shall request the agency head's permission to have the employee evaluated by a psychologist or physician determined by the agency. Upon approval, Human Resources shall schedule an appointment, and the employee shall submit to an evaluation. The examiner shall provide the agency head with conclusions, recommendations, and other information necessary to decide whether the employee is fit for duty.
- C. Political activity. An agency employee shall not violate the provisions of A.R.S. § 41-772 concerning permissible and improper political activity.
- D. Conflict of interest. An agency employee shall not violate the conflict of interest provisions of A.R.S. §§ 38-501, 38-502, 38-503, and 38-504 while engaged in outside activities or employment.
- E. Nepotism. An employee or candidate for employment shall not be appointed to any position in violation of A.R.S. § 38-481, nor shall an employee misuse or abuse appointment privileges.
- F. Attending Council meetings. With supervisory approval, an employee may attend a meeting of the Council during working hours if the employee is an interested party in a matter scheduled for consideration. The employee may have another representative assist in the presentation before the Council.
- G. Employee organization attendance at Council meetings. The agency head may authorize a recognized employee organization to send at least one representative to each Council meeting during working hours.

**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 2090, effective May 10, 2000 (Supp. 00-2). Amended by final rulemaking at 9 A.A.R. 1619, effective July 5, 2003 (Supp. 03-2).

**R13-5-316. Probation**

- A. Initial probation. An employee shall serve an initial probationary period of 12 months. Time spent in a special limited term

position does not count toward the initial probation in an officer classification.

- B.** Promotional probation. An employee shall serve a promotional probationary period of 12 months.
- C.** Effects of reclassification on probation. The probationary status of an employee reclassified as a result of a classification and compensation maintenance review under R13-5-201(H) is as follows:
  1. A permanent status employee shall not be required to serve a new probationary period if the employee continues to perform the same duties previously performed in the reclassified position.
  2. A probationary employee shall continue to serve the probationary period.
- D.** Effect of military service on probation. If a probationer is called into active military service and returns to the agency and satisfactorily completes probation, the employee's personnel record shall show that the employee achieved permanent status on the date the employee would have completed probation if military service had not intervened.
- E.** Extension of probation. An agency head may extend an employee's probationary period by adding a period equal to the time the employee was absent from work or when the employee's performance was below standard. If the probationary period is extended, the manager shall notify the employee of the extension before the end of the probationary period.
- F.** Satisfying probation. A probationer who achieves a standard or higher performance evaluation by the end of the probationary period shall obtain permanent status in the appointed classification.
- G.** Permanent status by default. An employee shall achieve permanent status by default if the employee's manager either fails to extend or reject the probationary period prior to the last day of the employee's probation.
- H.** Rejection of a probationer. An agency head may, at any time during the probationary period, reject a probationer without cause and without the right to Council review.
- I.** Effect of rejection of initial probationer. If an employee is rejected during initial probation the employee shall be separated from the agency.
- J.** Effect of rejection of promotional probationer. If a regular employee is rejected during promotional probation or probation for a different but equal classification, the agency head shall reappoint the employee to a vacant position in the employee's former classification or an equal position for which the employee is qualified. If there is no vacancy in an appropriate classification, the agency head may temporarily assign the employee until a vacancy is available.
- K.** Notice of rejection of probation. An agency shall notify a rejected probationer as follows:
  1. The employee's manager shall prepare a notice, stating the effective date of the rejection. The manager shall ensure that this date is no later than the last day of the probationary period.
  2. The employee's manager shall obtain the agency head's signature on the notice of rejection.
  3. The employee's manager shall serve the probationer with the notice, either in person or by mail, on or before the effective date of rejection.
  4. The employee's manager shall submit a copy of the rejection notice to the business manager within 20 days after the notice is served.
- L.** Review of rejection of promotional probation. Within 20 days after the employee's manager delivers or mails the notice, a rejected promotional probationer may file a written request with the Council for review of the rejection. The Council may

review the procedures utilized by the agency to assure conformity with Council rules and statutes.

- M.** Withdrawal of rejection. At any time before the Council acts on a probationer's rejection, the agency head may withdraw the notice of rejection and restore the employee to the previous position or another position for which the employee is qualified.
- N.** Probation for a returning employee. If a separated employee is reinstated to a classification previously held with permanent status, the agency head may require the employee to serve a probationary period. If a separated employee is recalled or reinstated into a classification different from any classification previously held with permanent status, the employee shall serve a probationary period. If an employee is separated from an agency while serving an initial probation, the employee shall be required to serve an initial probation upon being recalled or reinstated.
- O.** Probation not required. If an employee is recalled or reappointed within two years after undergoing a reduction-in-force, the employee shall not be required to serve a probationary period if reappointed to the same classification previously held with permanent status. An employee shall not be required to serve another probationary period if the employee is:
  1. Reinstated by the Council, or
  2. Reassigned or demoted by the agency head into a classification previously held by the employee.
- P.** Probation for a special limited term employee. An employee in a special limited term position pending completion of requirements for the classification of officer shall serve an initial probation throughout the duration of the special limited term appointment. An employee promoted to officer from a special limited term position shall serve a one-year initial probation in the officer classification.

#### Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 2090, effective May 10, 2000 (Supp. 00-2). Amended by final rulemaking at 6 A.A.R. 4495, effective November 7, 2000 (Supp. 00-4). Amended by final rulemaking at 7 A.A.R. 5373, effective November 6, 2001 (Supp. 01-4). Amended by final rulemaking at 9 A.A.R. 1619, effective July 5, 2003 (Supp. 03-2).

#### R13-5-317. Performance Evaluations

- A.** Establishing a performance evaluation program. The Council shall adopt and an agency shall administer a performance evaluation program. The program shall include a rating system that informs the agency head and the employee of the employee's relative level of performance. The evaluation program shall include training on how to achieve and maintain standard performance and how to improve performance.
- B.** Performance evaluation manual. The Council shall provide a manual that provides clear and concise guidelines for objectively measuring and reporting employee performance. Only the Council may authorize a revision of the manual. Each employee shall receive a copy of the manual, which includes evaluation procedures and forms.
- C.** Frequency of evaluation. A supervisor shall evaluate and give each permanent-status employee a written performance evaluation at least one time in each 12 month period. A supervisor shall evaluate a probationary employee at least one time in each six-month period.
- D.** Effect of failure to evaluate. If an employee's supervisor fails to evaluate the employee, or fails to evaluate the employee by the end of the rating period, the employee shall be given no less than a standard evaluation for that period.

- E. Grieving an evaluation. An employee who receives a less than standard rating may file a grievance with the agency head. If the grievance is denied by the agency head, the employee may grieve to the Council any overall rating that:
1. Is less than standard,
  2. Would cause a reduction in pay, or
  3. Would result in withholding or postponing a salary adjustment.

**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 2090, effective May 10, 2000 (Supp. 00-2).

**ARTICLE 4. ASSIGNMENTS**

*Editor's Note: Former Article 4, consisting of Section R13-5-20, repealed by final rulemaking at 6 A.A.R. 1982, effective May 10, 2000; new Article 4, consisting of Sections R13-5-401 through R13-5-403, adopted by final rulemaking at 6 A.A.R. 2090, effective May 10, 2000 (Supp. 00-2).*

**R13-5-401. Special Duty Assignment**

- A. General. An agency head may assign an employee to a special duty assignment in the employee's current classification or a higher classification. A special duty assignment is temporary and is not a promotion.
- B. Pay and eligibility. An agency head may add special-duty pay to the employee's base pay. If the special duty assignment is for a different or higher classification, the agency head may authorize a pay rate within that classification. A special duty assignment is subject to the following conditions:
1. The assigned employee meets the minimum requirements of the special duty classification; and
  2. The assigned employee performs the duties of the assigned classification.
- C. Review by Council. Special duty assignments shall be biennially reviewed by the Council no later than September in even numbered years.
- D. Return to regular duty. Upon completion of a special duty assignment, the agency head shall discontinue special duty pay and reassign the employee to the previously held position or to a similar position in the same classification at the employee's normal pay level.

**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 2090, effective May 10, 2000 (Supp. 00-2).

**R13-5-402. Uncovered Appointment**

- A. Authorization. An agency head may authorize an employee to temporarily accept an uncovered appointment within:
1. The agency,
  2. Another state agency,
  3. The Governor's office,
  4. The Legislature, or
  5. Another government agency.
- B. Employee rights. A classified employee in an uncovered appointment shall retain all rights of a covered employee except for the right to appeal removal from the uncovered appointment.
- C. Returning to regular duty. Upon completion of an uncovered appointment, the agency head shall reassign the employee to the previously held position or to a similar position in the same classification.
- D. Leave policy for an uncovered employee accepting a covered position: An uncovered employee of a state agency or any state budget unit, may transfer accrued annual and sick leave when accepting a covered position with an agency under the jurisdiction of the Council.

1. Annual leave.
  - a. Up to 360 hours of annual leave may be transferred at the gaining agency's discretion.
  - b. Annual leave in excess of 360 hours shall be paid off by the losing agency.
  - c. An employee shall be paid for any annual leave that is not accepted by the gaining agency.
2. Sick leave. All accrued sick leave hours shall be accepted by and transferred to the agency.

**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 2090, effective May 10, 2000 (Supp. 00-2).

**R13-5-403. Transfer of an External Function**

- A. Transferring a function. If a state program is transferred into an agency, the losing agency shall pay a transferring employee for all accrued compensatory leave as of the date of the transfer. Effective on the date of transfer, the losing agency shall also transfer sufficient funds to the receiving agency to pay for accrued annual leave, recognition leave, and sick leave of a transferring employee.
- B. Council action. The business manager shall determine the classification of a transferring employee and recommend that the Council adopt other classifications that need to be added or revised.
- C. Transferee status. A transferee shall retain accrued annual leave, recognition leave, sick leave, and length of state service. A transferee shall also retain the transferee's current rate of pay until the Council reviews and approves a new or existing compensation schedule.
- D. Appointing a transferee. An agency head shall determine the organizational placement of a transferred program and appoint each transferee to an appropriate position.
- E. Probation. A transferee on probation at the time of the transfer shall complete the transferee's probationary period under R13-5-316 before obtaining permanent status.

**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 2090, effective May 10, 2000 (Supp. 00-2).

**ARTICLE 5. EMPLOYEE LEAVE**

*Editor's Note: Former Article 5, consisting of Sections R13-5-25 through R13-5-28, repealed by final rulemaking at 6 A.A.R. 1982, effective May 10, 2000; new Article 5, consisting of Sections R13-5-501 through R13-5-513, adopted by final rulemaking at 6 A.A.R. 2090, effective May 10, 2000 (Supp. 00-2).*

**R13-5-501. Employee Leave Guidelines**

- A. Full-time employee. A full-time employee may accrue the following types of paid leave:
1. Annual leave;
  2. Holiday leave;
  3. Recognition leave; and
  4. Sick leave.
- B. Leave request. An employee shall not use leave before it is accrued. An employee shall obtain supervisory approval before taking leave. An agency may establish a policy allowing delayed notice to the employee's supervisor in emergency situations.
- C. Time accounting record. An agency shall maintain a record of time worked, leave earned, leave taken, and accrued leave balances. The agency shall periodically provide a leave balance statement to an eligible employee. A non-exempt employee shall report all time worked and all leave taken on a weekly basis. An exempt employee shall report leave taken as directed by agency policy.



**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 2090, effective May 10, 2000 (Supp. 00-2).

**R13-5-502. Administrative Leave**

An agency head may authorize administrative leave with pay:

1. During a disaster, state of emergency, or a day of mourning declared by the Governor;
2. When an employee is instructed to not report for duty, or to return home because of a hazardous condition; or
3. To temporarily relieve an employee from duty for the good of the agency or the employee.

**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 2090, effective May 10, 2000 (Supp. 00-2).

**R13-5-503. Annual Leave**

**A.** Computing length of service. For determining an annual leave accrual rate, an employee's length of service shall begin on the first day of the first complete month of employment. Only a complete month of qualifying service is counted before and after a break-in-service. Previous periods of service as a state employee are counted toward annual leave accrual. Periods of military leave and active military service are included in computing annual leave if the employee complies with the requirements of A.R.S. § 38-610.

**B.** Accruing annual leave. An employee in pay status for half of a month shall accrue annual leave. A part-time employee scheduled to work 20 or more hours in a week shall accrue annual leave based on the percentage of full-time hours specified in the appointment. A part-time employee scheduled to work less than 20 hours in a week shall not accrue annual leave. A full-time employee shall accrue annual leave under the following schedule:

Beginning	Completion	Monthly accrual rate
1st year	5th year	10 hours
6th year	10th year	12 hours
11th year	20th year	14 hours
21st year		16 hours

**C.** Progression of annual leave. An employee shall progress to the next higher accrual rate on the first day of the month following completion of the required length of service.

**D.** Using annual leave. An employee may use accrued annual leave under state and federal law and agency policy. The employee shall schedule the use of accrued annual leave through the employee's supervisor.

**E.** Maximum accumulation and disposition. An employee may accumulate annual leave without limit during a year. At the end of each year, an employee's annual leave balance shall not exceed 360 hours. It shall be the responsibility of each employee to schedule annual leave to avoid having a balance over 360 hours at the end of the year. If an employee's annual leave balance on January 1 exceeds the allowed maximum, the agency head may withdraw the excess and deposit the hours as sick leave in the employee's sick leave balance. The agency head may authorize a later date for conversion of excess annual leave if an employee's duty assignment, receipt of recognition leave, injury, or illness prevents timely use of annual leave.

**F.** Compensation for unused leave. Upon separation from agency employment, an employee is paid for any unused annual leave remaining in the employee's account at the average rate received by the employee in the last three years of the

employee's employment or the employee's current rate of pay, whichever is higher.

**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 2090, effective May 10, 2000 (Supp. 00-2). Amended by final rulemaking at 6 A.A.R. 4495, effective November 7, 2000 (Supp. 00-4).

**EMERGENCY RULEMAKING**

**R13-5-503. Annual Leave**

**A.** Computing length of service. For determining an annual leave accrual rate, an employee's length of service shall begin on the first day of the first complete month of employment. Only a complete month of qualifying service is counted before and after a break-in-service. Previous periods of service as a state employee are counted toward annual leave accrual. Periods of military leave and active military service are included in computing annual leave if the employee complies with the requirements of A.R.S. § 38-610.

**B.** Accruing annual leave. A part-time employee scheduled to work 20 or more hours in a week shall accrue annual leave based on the percentage of full-time hours specified in the appointment. A part-time employee scheduled to work less than 20 hours in a week shall not accrue annual leave. A full-time employee shall accrue annual leave under the following schedule:

Beginning	Completion	Biweekly accrual rate
1st year	5th year	4.62 hours
6th year	10th year	5.54 hours
11th year	20th year	6.47 hours
21st year		7.39 hours

**C.** Progression of annual leave. An employee shall progress to the next higher accrual rate on the first day of the month following completion of the required length of service.

**D.** Using annual leave. An employee may use accrued annual leave under state and federal law and agency policy. The employee shall schedule the use of accrued annual leave through the employee's supervisor.

**E.** Maximum accumulation and disposition. An employee may accumulate annual leave without limit during a year. At the end of each year, an employee's annual leave balance shall not exceed 360 hours. It shall be the responsibility of each employee to schedule annual leave to avoid having a balance over 360 hours at the end of the year. If an employee's annual leave balance on January 1 exceeds the allowed maximum, the agency head may withdraw the excess and deposit the hours as sick leave in the employee's sick leave balance. The agency head may authorize a later date for conversion of excess annual leave if an employee's duty assignment, receipt of recognition leave, injury, or illness prevents timely use of annual leave.

**F.** Compensation for unused leave. Upon separation from agency employment, an employee is paid for any unused annual leave remaining in the employee's account at the average rate received by the employee in the last three years of the employee's employment or the employee's current rate of pay, whichever is higher.

**Historical Note**

Amended by emergency rulemaking at 10 A.A.R. 1163, effective March 4, 2004 (Supp. 04-1).

**R13-5-504. Civic Duty**

- A. Voting. Under conditions outlined in A.R.S. § 16-402, an employee may be absent with pay for the time required to vote.
- B. Jury duty. An employee shall report for jury duty as directed by a summons unless officially excused by the Jury Commissioner for reasons under A.R.S. § 21-202. When summoned, the employee shall notify or provide the immediate supervisor with a copy of the summons.
  - 1. While on jury duty, an employee is considered absent with pay.
  - 2. Upon receipt of a summons for jury duty, a commissioned employee shall notify the Jury Commissioner of the employee's peace officer status.
- C. Witness. An employee subpoenaed as a witness is considered absent with pay, unless the subpoena is unrelated to agency business.
- D. Fees. An employee paid for civic duty under this Section shall forward all jury duty or witness fees to the agency.
- E. Vehicle mileage reimbursement. An employee may retain any mileage reimbursement paid by the court for the use of a privately owned vehicle. An employee shall remit to the agency any mileage reimbursement for use of a state-owned vehicle.

**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 2090, effective May 10, 2000 (Supp. 00-2). Amended by final rulemaking at 9 A.A.R. 1619, effective July 5, 2003 (Supp. 03-2).

**R13-5-505. Compensatory Leave**

- A. Compensatory leave. An agency shall establish policies and guidelines for accruing compensatory leave under the overtime provisions of the Fair Labor Standards Act.
- B. Using compensatory leave. An employee may use accrued compensatory leave under state and federal law and agency policy. The employee shall schedule the use of accrued compensatory leave through the employee's supervisor.
- C. Payment upon separation. Upon separation from an agency, an employee shall be paid for any accrued compensatory leave remaining in the employee's account at the average rate received by the employee in the last three years of the employee's employment or the employee's current rate of pay, whichever is higher.

**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 2090, effective May 10, 2000 (Supp. 00-2).

**R13-5-506. Donated Annual Leave**

- A. Definitions for purposes of this Section:
  - 1. "Recipient" means an employee in the same agency as a donating employee or a family member of the donating employee who is employed in another agency, department, board, or commission.
  - 2. "Family member" means a spouse, natural child, adopted child, foster child, stepchild, natural parent, stepparent, adoptive parent, grandparent, grandchild, brother, sister, sister-in-law, brother-in-law, son-in-law, daughter-in-law, mother-in-law, or father-in-law.
  - 3. "Immediate family" means a spouse, child, brother, sister, natural parent, stepparent, adoptive parent, or an individual for whom a recipient has legal guardianship.
  - 4. "Extended illness or injury" means a period of at least three consecutive weeks to a maximum of six consecutive months.
  - 5. "Seriously incapacitating" means an illness or injury that renders an employee unable to perform the employee's

duties, or that confines an immediate family member to home or hospital.

- B. Donating leave. An employee may donate accrued annual leave to a recipient who qualifies for donated leave under the personnel rules of the agency where the recipient is employed and who has exhausted all available leave balances. An employee may donate accrued annual leave by submitting a written notice to the Human Resources section of the donating agency with the information required under the agency's policies.
- C. Qualifying for donated leave. An employee may request and use donated annual leave if the employee has a seriously incapacitating or extended illness or injury or a member of the employee's immediate family has a seriously incapacitating and extended illness or injury and the employee has exhausted all available leave balances.
  - 1. An employee requesting donated leave shall submit a written request for donated leave under the agency's policy. An agency shall approve only those requests that qualify for donated leave under this Section.
  - 2. Except as provided in subsection (C)(3), an employee receiving donated leave shall not use more than six consecutive months of donated leave per illness or injury.
  - 3. If an employee who has a seriously incapacitating or extended illness or injury applies for long-term disability (LTD) insurance by the end of the fifth month of leave, the employee may continue to use donated leave until an LTD determination is made.
- D. Calculating donated leave. An agency shall convert the number of hours of annual leave donated in proportion to the hourly rate of pay of the donating employee and the recipient. Donated hours are converted by multiplying the number of hours donated by the donating employee's hourly rate of pay and dividing the result by the recipient employee's hourly rate of pay. An agency shall add hours converted to the recipient's sick leave balance as needed.
- E. Distributing unused leave. If a recipient separates from state service before the recipient uses all donated leave, no longer qualifies for donated leave, or otherwise no longer needs donated leave, the agency shall return unused leave to the contributor of the donated leave on a pro-rata basis, unless a contributor gives written notice to Human Resources to deposit the unused leave into an agency "donated-leave bank" for use of other employees in the future.

**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 2090, effective May 10, 2000 (Supp. 00-2). Amended by final rulemaking at 7 A.A.R. 5373, effective November 6, 2001 (Supp. 01-4). Amended by final rulemaking at 9 A.A.R. 1619, effective July 5, 2003 (Supp. 03-2).

**13-5-507. Holiday Leave**

- A. Paid holidays. The agency shall observe the holidays authorized under A.R.S. § 1-301.
- B. Eligibility. To be eligible for holiday leave, an employee shall be in pay status 10 or more hours in the work week.
  - 1. If a holiday occurs on an employee's regular work day, the employee may be absent with pay for the number of hours regularly scheduled to work, up to a maximum of eight hours, unless the employee is required to work to maintain essential state services.
  - 2. An employee required to work on a holiday shall receive pay for the time worked, and leave credits for the number of hours regularly scheduled to work on that day, up to a maximum of eight hours.

3. If a holiday occurs on a day when an employee is scheduled to work, but the employee is unable to work because of an illness or injury, the employee may take sick leave and accrue holiday leave credits as provided under subsection (C) for the number of hours regularly scheduled to work on that day, up to a maximum of eight hours.
  4. An employee not scheduled to work on a holiday shall receive leave credits, up to a maximum of eight hours.
  5. A part-time employee shall accrue prorated leave based on hours authorized to work.
- C.** Accruing holiday leave. An agency may credit holiday leave to the employee's annual leave balance or establish a separate balance for holiday leave. The agency shall add accrued holiday leave to an employee's annual or holiday leave balance.
- D.** Using holiday leave. An employee may use accrued holiday leave under state and federal law and agency policy. The employee shall schedule the use of accrued holiday leave through the employee's supervisor.

**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 2090, effective May 10, 2000 (Supp. 00-2).

**R13-5-508. Industrial Leave**

An agency shall establish policies and procedures to comply with statutes regulating industrial leave under A.R.S. § 23-901, et seq. and A.R.S. § 23-1043.02.

**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 2090, effective May 10, 2000 (Supp. 00-2).

**R13-5-509. Leave Amortization**

An agency may provide a leave amortization plan for an employee planning to retire.

**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 2090, effective May 10, 2000 (Supp. 00-2).

**R13-5-510. Leave Without Pay****A.** Short-term leave without pay.

1. An agency head shall place an employee on leave without pay when the employee is unable to report to work due to illness or non-industrial injury and the employee has no accrued or donated leave balance to cover the absence. The supervisor may require the employee to submit supporting documentation for sick leave without pay. If the absence exceeds five working days, the employee must request leave without pay as outlined in subsection (A)(2) of this Section.
2. An employee may request a leave of absence without pay of 30 working days or less by notifying the employee's manager as soon as possible and submitting a signed memorandum. The employee shall include the reason for the request and the employee's intended departure and return-to-duty dates. The agency head may approve or deny the request and may set a date for the employee's return. If the leave is approved, the employee's manager shall notify the employee in writing, including any stipulation of approval. If the employee returns on schedule, the employee shall retain the position held before the leave of absence.

- B.** Extended leave without pay. An employee may request an extended leave-of-absence without pay of over 30 working days by notifying the employee's manager as soon as possible and submitting a written request under the agency's policies and procedures.

1. Approval. An agency head may approve an extended leave without pay. If extended leave without pay is approved, an employee shall sign a leave of absence agreement with the agency. The leave-of-absence agreement shall outline the conditions of the leave and the employee's return to work.
  2. Cancellation. An agency head may cancel a leave-of-absence without pay for any of the following reasons:
    - a. The employee violates any condition of the leave-of-absence agreement, including failure to return to work on schedule;
    - b. The agency head directs the employee to return to duty because of a need for the employee's services; or
    - c. The employee requests to return early from the leave-of-absence.
  3. Return to work. An employee shall return to duty on schedule from any approved leave of absence unless an extension is approved by the agency. When an employee returns from an extended leave without pay, the agency head shall return the employee to the same position, to another position in the same classification, or to a position in a similar classification for which the employee is qualified, provided:
    - a. The employee complied with all terms of the leave-of-absence agreement, and
    - b. The employee passes background screening by the agency head.
- C.** Disposition of accrued leave. An employee may retain annual and sick leave balances while on an extended leave-of-absence. An employee shall be paid for any unused compensatory or holiday leave balances at the beginning of an extended leave-of-absence. If an employee is granted leave without pay to accept an uncovered appointment with the Governor, the Legislature, or another state agency, the agency head shall transfer the employee's accumulated sick leave to the receiving agency. The employee's annual leave may also be transferred if the employee and both agencies agree.

**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 2090, effective May 10, 2000 (Supp. 00-2).

**R13-5-511. Military Leave of Absence**

- A.** Privileges of military service. An employee shall receive all rights provided by state and federal law for a military leave-of-absence under A.R.S. § 26-168 and A.R.S. § 38-610.
- B.** Notifying the agency. An employee expecting an assignment to military duty shall notify the immediate supervisor as soon as possible. Upon receiving orders to report, the employee shall submit a copy of the orders and a written request for military leave to the employee's supervisor. The supervisor shall process the request under the agency's policy and procedure for a military leave-of-absence.
- C.** Extended military leave. If an employee's orders for active duty exceed the time limit for paid military leave, the employee may request to use accrued leave or leave without pay for the remainder of the military leave.
- D.** Returning to position. Upon return from military leave-of-absence, an agency head shall restore an employee to the position held before the military leave-of-absence, or to a similar position within the employee's classification.
- E.** Promotion. Upon return from a military leave-of-absence, an employee may be promoted by the agency head if the employee's name was on a promotional list at the time of activation into military service.

**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R.  
2090, effective May 10, 2000 (Supp. 00-2).

**R13-5-512. Recognition Leave**

- A. Employee recognition. An agency head may grant paid time off as part of recognition given to worthy employees under a formal awards program, or as an incentive for continued superior performance. The agency shall publish recognition leave guidelines for annual nominations, selections, and awards.
- B. Adding to leave balance. An employee awarded recognition leave shall receive annual leave hours added to the employee's leave balance.

**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R.  
2090, effective May 10, 2000 (Supp. 00-2).

**R13-5-513. Sick Leave**

- A. Definitions. The following definitions shall apply in this Section:
  - 1. "Family sick leave" means:
    - a. Providing personal care or attending to an employee's family member who has a serious illness, injury, or temporary disability;
    - b. A medical appointment or transporting a family member for consultation, examination or treatment by a licensed health care provider; or
    - c. Attendance at the death or funeral of an employee's family member.
  - 2. "Family member" means an employee's spouse, child, brother, sister, and parent by blood, marriage, adoption, or an individual for whom the employee has legal guardianship.
- B. Accruing sick leave.
  - 1. A full-time employee shall receive 10 hours of sick leave for each month of service.
  - 2. A part-time employee working more than 20 hours per week shall receive sick leave based upon the proportion of full-time hours worked.
  - 3. The following employees are not eligible for sick leave:
    - a. A part-time employee working less than 20 hours in a week,
    - b. An Intern, and
    - c. An Intermittent employee.
  - 4. An eligible employee shall receive sick leave credit if the employee is in pay status for at least half of the employee's working days in that month.
  - 5. Sick leave may be accrued without limit.
- C. Using sick leave. An eligible employee may use accrued sick leave after one month of service. A supervisor shall authorize sick leave if an employee is absent because of:
  - 1. A medical condition that makes the employee unable to perform official duties;
  - 2. An appointment with a licensed health care provider for consultation, examination, or treatment, or
  - 3. Family sick leave.
- D. Family sick leave limits. Family sick leave shall not exceed 40 hours in a year. If an employee has used the authorized 40 hours of family sick leave and exhausted all compensatory and annual leave, the agency head may authorize the employee to use the employee's sick leave.
- E. Supervisory review of sick leave. A supervisor may require supporting documentation for any sick leave. If an employee's use of family sick leave or regular sick leave seems abusive or violates any provision of this Section, the employee's supervisor may disapprove the sick leave and charge the absence to the employee's annual leave or leave without pay. When an

employee has been on sick leave for five or more consecutive days, the supervisor may require the employee to submit a medical evaluation form, signed by a licensed health care provider.

- F. Returning from sick leave. An employee shall return to duty or to limited duty as soon as the employee is able to do so with permission of the employee's physician and without posing a risk to the employee or others.
- G. Medical review. If a supervisor is concerned about a returning employee's fitness for duty, the supervisor may request a medical evaluation under R13-5-315(B), or request that the employee be temporarily assigned to limited duty.
- H. Forfeiture of sick leave. An employee shall forfeit accumulated sick leave upon separation from state service, unless eligible under the provisions of A.R.S. § 38-615.
- I. Restoring sick leave. If a former employee is recalled, reinstated, or rehired within two years, an agency shall restore the employee's previous sick leave balance. Sick leave for which the employee received compensation under Arizona Statutes is excluded from restoration.
- J. Sick leave credit for Arizona state service. Upon appointment to an agency, an Arizona state employee with previously accrued sick leave may have the sick leave credit added to the employee's leave balance, provided:
  - 1. The employee does not receive compensation for accrued sick leave upon separating from a state agency;
  - 2. The employee is hired within two years of separating from a state agency; and
  - 3. The employee was hired after December 31, 1996.
- K. Agency leave policy. An agency shall establish a sick leave policy that complies with all of the provisions of the Family Medical Leave Act.

**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R.  
2090, effective May 10, 2000 (Supp. 00-2). Amended by  
final rulemaking at 6 A.A.R. 4495, effective November 7,  
2000 (Supp. 00-4).

**EMERGENCY RULEMAKING****R13-5-513. Sick Leave**

- A. Definitions. The following definitions shall apply in this Section:
  - 1. "Family sick leave" means:
    - a. Providing personal care or attending to an employee's family member who has a serious illness, injury, or temporary disability;
    - b. A medical appointment or transporting a family member for consultation, examination or treatment by a licensed health care provider; or
    - c. Attendance at the death or funeral of an employee's family member.
  - 2. "Family member" means an employee's spouse, child, brother, sister, and parent by blood, marriage, adoption, or an individual for whom the employee has legal guardianship.
- B. Accruing sick leave.
  - 1. A full-time employee shall receive 4.62 hours of sick leave biweekly.
  - 2. A part-time employee working more than 20 hours per week shall receive sick leave based upon the proportion of full-time hours worked.
  - 3. The following employees are not eligible for sick leave:
    - a. A part-time employee working less than 20 hours in a week,

- b. An Intern, and
  - c. An Intermittent employee.
- 4. An eligible employee shall receive sick leave credit if the employee is in pay status for at least half of the employee's working days in that month.
- 5. Sick leave may be accrued without limit.
- C. Using sick leave. An eligible employee may use accrued sick leave after one month of service. A supervisor shall authorize sick leave if an employee is absent because of:
  - 1. A medical condition that makes the employee unable to perform official duties;
  - 2. An appointment with a licensed health care provider for consultation, examination, or treatment, or
  - 3. Family sick leave.
- D. Family sick leave limits. Family sick leave shall not exceed 40 hours in a year. If an employee has used the authorized 40 hours of family sick leave and exhausted all compensatory and annual leave, the agency head may authorize the employee to use the employee's sick leave.
- E. Supervisory review of sick leave. A supervisor may require supporting documentation for any sick leave. If an employee's use of family sick leave or regular sick leave seems abusive or violates any provision of this Section, the employee's supervisor may disapprove the sick leave and charge the absence to the employee's annual leave or leave without pay. When an employee has been on sick leave for five or more consecutive days, the supervisor may require the employee to submit a medical evaluation form, signed by a licensed health care provider.
- F. Returning from sick leave. An employee shall return to duty or to limited duty as soon as the employee is able to do so with permission of the employee's physician and without posing a risk to the employee or others.
- G. Medical review. If a supervisor is concerned about a returning employee's fitness for duty, the supervisor may request a medical evaluation under R13-5-315(B), or request that the employee be temporarily assigned to limited duty.
- H. Forfeiture of sick leave. An employee shall forfeit accumulated sick leave upon separation from state service, unless eligible under the provisions of A.R.S. § 38-615.
- I. Restoring sick leave. If a former employee is recalled, reinstated, or rehired within two years, an agency shall restore the employee's previous sick leave balance. Sick leave for which the employee received compensation under Arizona Statutes is excluded from restoration.
- J. Sick leave credit for Arizona state service. Upon appointment to an agency, an Arizona state employee with previously accrued sick leave may have the sick leave credit added to the employee's leave balance, provided:
  - 1. The employee does not receive compensation for accrued sick leave upon separating from a state agency;
  - 2. The employee is hired within two years of separating from a state agency; and
  - 3. The employee was hired after December 31, 1996.
- K. Agency leave policy. An agency shall establish a sick leave policy that complies with all of the provisions of the Family Medical Leave Act.

#### Historical Note

Amended by emergency rulemaking at 10 A.A.R. 1163, effective March 4, 2004 (Supp. 04-1).

### ARTICLE 6. GRIEVANCES

*Editor's Note: Former Article 6, consisting of Sections R13-5-30 through R13-5-36, repealed by final rulemaking at 6 A.A.R.*

*1982, effective May 10, 2000; new Article 6, consisting of Sections R13-5-601 and R13-5-602, adopted by final rulemaking at 6 A.A.R. 2090, effective May 10, 2000 (Supp. 00-2).*

#### R13-5-601. Agency Grievance System

- A. General. The agency shall provide a system for considering and responding to an employee grievance regarding classification, compensation, performance evaluation, and application of Council rules.
- B. Denial. When an agency head denies an employee grievance regarding classification, compensation, performance evaluation, or application of Council rules, the agency head shall notify the Council.

#### Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 2090, effective May 10, 2000 (Supp. 00-2).

#### R13-5-602. Council Review

- A. General. The Council shall only review a grievance related to classification, compensation, employee appraisal system, and application of Council rules after the employee exhausts the remedies in the agency's grievance process. If the grievance remains unresolved, the employee may file a request for Council review within 20 days after the employee receives the agency's notice of denial of the grievance.
- B. Procedure. An employee shall submit a written request for Council review of a grievance.
  - 1. The employee's request shall include:
    - a. The specific relief sought by the employee;
    - b. The asserted factual basis for relief; and
    - c. An account of the agency's response during the internal grievance process.
  - 2. Upon receipt of the request, the Council shall send a copy of the request to the agency head.
- C. Response. The agency may file a written response with the Council at any time before the Council reviews the grievance. The agency head shall send a copy of the response to the employee at least 10 days before the Council reviews the grievance. At the employee's request, the 10 days may be waived.
- D. Informal dispositions. The Council may informally dispose of a grievance without further review of the merits, under any of the following methods:
  - 1. By withdrawal, if the employee withdraws the grievance in writing or on the record at any time before a decision is issued;
  - 2. By default to the appearing party, if the employee or the agency, fails to appear at the meeting; or
  - 3. By stipulation, if the parties agree on the record or in writing at any time before the Council issues a decision on the grievance.
- E. Council review. The Council shall review an employee's grievance in an open meeting. The Council shall allow the employee to make a statement in support of the grievance, and shall allow the agency an opportunity to respond. The Council may limit the length of the parties' statements. In its discretion, the Council may allow the employee or the agency to present testimonial or documentary evidence on the issue. If the Council allows a party to offer evidence, the Council shall allow the other party an opportunity to respond with argument or evidence. The Council may limit the time parties are allowed to present evidence.
- F. Scheduling of Council review. An employee's grievance shall be scheduled for the next available business meeting of the Council but no sooner than 20 days after the grievance was received by the business manager. At the employee's request, the 20 days may be waived.

- G. Representation by counsel. Both the agency and the employee may have counsel present during the Council's review of the grievance.
- H. Decision. The Council shall state its decision in an open meeting. The Council shall sustain the agency's action on the grievance unless it finds the agency's denial is not supported by substantial evidence or is inconsistent with Council rules.

#### Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 2090, effective May 10, 2000 (Supp. 00-2).

### ARTICLE 7. DISCIPLINE AND APPEALS

*Editor's Note: Former Article 7, consisting of Sections R13-5-40 through R13-5-43, repealed by final rulemaking at 6 A.A.R. 1982, effective May 10, 2000; new Article 7, consisting of Sections R13-5-701 through R13-5-705, adopted by final rulemaking at 6 A.A.R. 2090, effective May 10, 2000 (Supp. 00-2).*

#### R13-5-701. Causes for Discipline.

The causes for discipline are found in A.R.S. § 41-1830.15.

#### Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 2090, effective May 10, 2000 (Supp. 00-2).

#### R13-5-702. Disciplinary Procedures

- A. Receiving a complaint. A person may file a complaint with an agency asserting that an employee engaged in activity constituting cause for discipline and requesting that the agency head take appropriate disciplinary action against the employee.
- B. Initiating disciplinary action. An agency head may take appropriate disciplinary action against an employee for any cause listed in A.R.S. § 41-1830.15.
- C. Time limit for filing a disciplinary action. An agency shall not file a disciplinary action later than 120 days after the date the agency discovers or should have discovered that the employee engaged in alleged activity constituting cause for discipline. The disciplinary action is deemed to be filed when the notice is filed with the Council, except that:
  - 1. The 120-day time limit does not run during any criminal investigation by the employee's agency, or any other agency, if the disciplining agency informs the business manager of the pending criminal investigation and provides the business manager with all relevant case numbers and any other information requested by the Council. The agency shall provide a status report every 30 days to the business manager. The agency shall notify the business manager when a case is taken off criminal hold.
  - 2. At the request of an agency, the Council may, upon a showing of good cause, extend the time for an agency to file a disciplinary action up to an additional 60 days.
  - 3. If a manager or a supervisor is aware of the employee's alleged actions that constitutes criminal offense but fails to act the 120-day time limit does not run during the period of the manager or supervisor's inaction, if:
    - a. The supervisor or manager is disciplined for failure to act.
    - b. The offense is a misdemeanor involving theft or moral turpitude and is discovered within 120 days after the end of the 120-day period for taking disciplinary action.
    - c. The offense is a felony.
- D. Notice of disciplinary action. An agency head shall serve a written notice on the employee within 10 days after the agency files the notice of disciplinary action with the Council. The agency head's notice shall include:
  - 1. A statement of the nature of the disciplinary action;
  - 2. Any prior disciplinary action on which the current discipline is based;
  - 3. The effective date of the action;
  - 4. A specific statement of the causes; and
  - 5. A statement of the employee's right to appeal and the time limit in which the employee must file an appeal with the Council under R13-5-703(A), (B), and (C).
- E. Amended notice of disciplinary action before appeal is filed. At any time before an employee files an appeal, the agency head may file with the Council and serve the employee or former employee with an amended or supplemental notice of disciplinary action.
- F. Effect of dismissal. An employee's dismissal from the agency shall entail:
  - 1. Dismissal from all positions held by the employee;
  - 2. Removal of the employee's name from all employment or promotional lists; and
  - 3. Termination of the employee's pay on the date of dismissal.

#### Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 2090, effective May 10, 2000 (Supp. 00-2).

#### R13-5-703. Appeal to the Council

- A. Appealable actions. An employee may appeal any disciplinary action that results in the employee's dismissal, demotion, suspension without pay, forfeiture of accrued leave time, or reduction of pay.
- B. Form of appeal. To initiate an appeal, an employee shall submit a signed written appeal stating the specific grounds for the appeal.
- C. Time for appeal. An employee shall file an appeal within 30 days after being served with the notice of disciplinary action.
- D. Agency responsibility. An agency shall have the burden of going forward with the case once an appeal has been filed. An agency must prove the cause for disciplinary action by a preponderance of the evidence.
- E. Effect of appeal. The Council shall determine whether the cause for the disciplinary action is supported by law and the evidence. The Council may sustain, modify, or rescind the disciplinary action. If the disciplinary action is rescinded, the Council shall order the agency head to reinstate the employee and to pay the employee accumulated back pay.
- F. Amended notice of disciplinary action after employee files an appeal. If good cause exists, an agency head may file with the Council a motion to amend the notice of disciplinary action. The motion shall be filed no later than 30 days before the hearing.
- G. Notice of hearing. The Council shall notify the parties of the time and place of the hearing.
- H. Failure to appear. If a party, without good cause, fails to appear at the time and place set for a hearing, the Council may find in favor of the appearing party.
- I. Conduct of hearings. The Council may sit as a whole at a hearing, or the chair may designate one or more of its members to hold a hearing. A majority of the Council shall review the record of the hearing before making a decision if only one member is designated to hear the case. Only a Council member who was present at the hearing, or who reviewed the record may participate in making the decision. The member or members designated to preside at a hearing may administer oaths, subpoena and require attendance of witnesses and the production of books or papers, and cause the depositions of witnesses residing within or outside the State to be taken in the manner prescribed by law for depositions in civil cases in the Superior Court of this State.

- J. Witness fees. Witnesses at a hearing, other than employees, are entitled to the fees allowed witnesses under A.R.S. § 12-303.
- K. Payment of witness fees. If the Council subpoenas a witness on its own initiative, the Council shall pay the witness' fees and mileage. The requesting party shall pay the fees for subpoenaed witnesses. An employee appearing as a witness on duty shall receive travel expenses from the agency and shall not be entitled to witness fees.
- L. Discovery.
  - 1. Within 20 days after receiving a notice of appeal, the agency shall provide all material relating to the case, including all investigation materials, to the employee. For the purpose of this subsection, hand-written notes substantially incorporated within a report are not considered investigation materials.
  - 2. Within 20 days after receiving the agency's discovery, the employee shall provide all material relating to the defense of the employee to the agency.
  - 3. After initial discovery, each party shall provide all new material relating to the case to the other party within 10 days after receipt.
  - 4. If a party fails to provide material as required, the Council may preclude its use at the hearing.
- M. Motions. All motions shall be in writing and filed no later than 20 days prior to the hearing. A response shall be filed in writing within 10 days after service of the motion. The chair may designate one or more members of the Council to hear and rule on a motion, except a motion to dispose of the case requires a vote of a majority of the Council.
- N. Pleadings. The Council may strike a pleading not filed in accordance with this Section.
- O. Depositions:
  - 1. On the motion of a party, the Council may order the deposition of a witness under the following circumstances:
    - a. The witness does not reside within the state or is out of state,
    - b. The witness is too ill to attend the action before the Council, or
    - c. The deposition is for the purpose of discovery in preparing a case before the Council.
  - 2. The requesting party shall pay the expense of any deposition. An employee of the agency is not entitled to a witness fee for giving a deposition.
  - 3. The deposition of a witness who is unavailable to appear at a hearing may be used in evidence by either party or the Council.
- P. Open hearings. The Council's hearings shall be open to the public. The Council may, upon request of a party, exclude non-testifying witnesses from the hearing. The Council may keep excluded witnesses separated and prevent them from communicating with each other until all are examined. The Council may conduct a hearing in executive session under A.R.S. § 38-431.03(A)(1).
- Q. Minor discipline hearings. When the Council hears appeals of suspension without pay of 24 hours or less or the deduction of 24 hours or less from an employee's annual leave balance, each party shall have no more than three hours to present evidence unless the Council allows more time to assure a fair hearing.
- R. Legal counsel or representative. Before the hearing of any appeal, each party shall designate its legal counsel or representative for the record. The Council shall advise each party without legal counsel that the party may obtain and be represented by counsel at the hearing. At the request of a party, the Council may postpone the hearing for a reasonable length of time to allow a party to obtain legal counsel.
- S. Presentation of evidence. Both parties may present evidence and witnesses either personally or through a representative. The Council shall exclude evidence irrelevant to the causes set forth in the notice of disciplinary action.
- T. Settlement of disputes. The parties may agree to settle any matter pending before the Council. The parties shall submit the terms of settlement to the Council. If the Council approves the settlement, the settlement becomes final. If no settlement is reached, or if the proposed settlement is revoked or rejected by the Council, or withdrawn by either party, or if the settlement agreement is later vacated or reversed by a court, neither the settlement discussion nor any resulting agreement shall be admissible against the employee in any hearing before the Council on this matter.
- U. Decision. The Council shall render a decision in writing within 20 days after a hearing. In arriving at a decision, the Council may consider any disciplinary action taken within the previous 10 years against the employee, if the information is introduced at the hearing. The Council shall state its decision in an open meeting and shall issue the decision in writing within a reasonable time, but not to exceed 45 days, after the hearing. The Council's decision shall contain findings of fact and its order for disposition of the case.

#### Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 2090, effective May 10, 2000 (Supp. 00-2). Amended by final rulemaking at 9 A.A.R. 1619, effective July 5, 2003 (Supp. 03-2).

#### R13-5-704. Rehearing of Council Decision

- A. Motion for rehearing.
  - 1. Except as provided in subsection (C), any party in a contested case or appealable agency action may file a written motion for rehearing within 30 days after service of the decision. The requesting party shall specify the grounds for a rehearing, as provided in subsection (B). A respondent may file a response to the motion within 15 days after service.
  - 2. A party filing a post-hearing motion shall include references to the record where appropriate.
  - 3. The Council may require the parties to file written memoranda upon the issues raised in the motion and may permit oral argument.
  - 4. The Council may grant a rehearing on all or part of the issues. If a rehearing is granted, the Council shall specify the grounds for the rehearing, and the rehearing shall cover only those matters.
- B. Basis for a rehearing. The Council may grant a rehearing for any of the following causes:
  - 1. The Council acted in an arbitrary or capricious manner or abused its discretion;
  - 2. Misconduct of the Council or the prevailing party;
  - 3. Newly discovered material evidence which, with reasonable diligence, could not have been discovered and produced at the original hearing;
  - 4. Error in the admission or rejection of evidence or other errors of law occurring at the hearing or during the progress of the action;
  - 5. The decision was not supported by the evidence; or
  - 6. The decision is contrary to law.
- C. Decisions not subject to rehearing. The Council may issue a decision as final upon making a specific finding that a decision's immediate effectiveness is necessary for the preservation of the public peace, health, or safety, or that a rehearing of the decision is impractical, unnecessary, or contrary to the public interest.

**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 2090, effective May 10, 2000 (Supp. 00-2). Amended by final rulemaking at 9 A.A.R. 1619, effective July 5, 2003 (Supp. 03-2).

**R13-5-705. Time Limits**

Computation of time limits. In computing any period of time prescribed or allowed by this Chapter the day of the act or event from which the designated period or time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday.

**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 2090, effective May 10, 2000 (Supp. 00-2).

**ARTICLE 8. SEPARATION FROM EMPLOYMENT**

*Editor's Note: Former Article 8, consisting of Sections R13-5-45 through R13-5-48, repealed by final rulemaking at 6 A.A.R. 1982, effective May 10, 2000; new Article 8, consisting of Sections R13-5-801 through R13-5-804, adopted by final rulemaking at 6 A.A.R. 2090, effective May 10, 2000 (Supp. 00-2).*

**R13-5-801. Resignation or Retirement**

- A. Notice of resignation or retirement. An employee shall resign or retire from the agency by submitting a letter addressed to the agency head and stating the effective date of the separation.
- B. Oral resignation or retirement. If an employee resigns or retires orally rather than in writing, the employee's manager shall document the employee's stated separation date and forward the notice through the chain-of-command to the agency head.
- C. Abandonment of position. If an employee abandons a position, it shall be deemed to be a voluntary resignation from the agency. The employee's manager shall document the employee's failure to show up for work and forward the notice through the chain-of-command to the agency head.
- D. Refusal of resignation. An agency head may refuse to accept a resignation and may dismiss an employee under R13-5-701(B).
- E. Withdrawal of resignation. An employee may withdraw a resignation only by submitting to the agency head a written notice of withdrawal before the employee's separation date. If a withdrawal is not submitted before the separation date, the resignation is final unless both the agency head and the employee agree to withdraw the resignation.

**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 2090, effective May 10, 2000 (Supp. 00-2).

**R13-5-802. Reduction in Force**

- A. General. The agency head may conduct a reduction in force when necessary because of a decrease in authorized positions, service area, funding, program responsibilities, or because of a legislative or executive mandate. If the reduction in force involves removal of a filled position, the agency shall not re-establish the position for two years, unless removal of the position was caused by fiscal constraints, legislative action, or court order.
- B. Alternate methods. An agency head may pursue alternative methods of reducing costs without reducing the number of employees. Council approval will be required when:
  1. Temporarily reducing all employees' pay, or
  2. Assigning all employees time off without pay.

- C. Order of layoff. An employee shall be separated from an agency in the following order of preference:
  1. Internship appointment,
  2. Intermittent appointment,
  3. Part-time appointment,
  4. Provisional appointment,
  5. Probationary limited-term appointment who has not established permanent status,
  6. Limited-term appointment who has completed a probationary period but has not established permanent status,
  7. Probationary appointment in a non-limited term position, and
  8. Permanent status appointment.
- D. Laying off a probationer and special duty assignee. An employee on promotional probation or special duty shall compete for retention in the highest classification for which the probationer or assignee hold permanent status.
- E. Laying off a limited-term employee. A limited-term employee shall compete for retention only against other limited-term employees.
- F. Laying off a permanent status employee. If it becomes necessary to reduce the number of full-time employees holding regular appointments, an agency shall use the following method:
  1. An employee with the least seniority within a classification shall be the first employee reduced from that classification.
  2. An employee who is declared surplus to a classification may displace only the least senior employee in other classifications in which the employee previously held seniority rights.
- G. Determining seniority. Seniority within a classification shall be determined by the number of retention points of an employee. An employee with a greater number of retention points will be senior to another employee with lesser retention points within a classification.
- H. Using retention points. Regular employees who have the least retention points shall be considered first for transfer, classification reduction, or separation.
- I. Calculation of retention points within a classification. An employee shall receive one retention point for each month of service within the employee's classification.
- J. Calculation of retention points in a classification for which the employee has established rights. If an employee is transferred to a classification previously held by the employee, the employee shall receive one retention point for each month of service in that classification and one retention point for each month of service in a higher or equal classification.
- K. Eligibility for retention points. The following guidelines shall be used in determining an employee's eligibility for retention points:
  1. If the employee was in pay status for at least half of the employee's working days in that month.
  2. An employee shall receive credit for agency service before a separation if the separation was less than two years.
  3. An employee shall receive credit for periods of military leave under 38 U.S.C. 4311.
  4. An employee shall receive credit for periods of uncovered appointments with the agency.
  5. An employee's prior state service in a position transferred to the agency shall be counted.
  6. An employee shall not receive credit for periods constituting a break-in-service. However, periods of time before and after such break-in-service shall be counted.
- L. Resolution of a tie. If employees have the same number of retention points, the agency shall resolve tied scores by apply-



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ing the following tie-breakers in the following order of precedence:

1. The employee with the greatest length of qualifying service with the agency,
  2. The employee with the greatest length of qualifying service with the state,
  3. The employee who placed highest on the eligibility list for the classification, or
  4. If a tie continues to exist, it shall be broken by a lottery system.
- M.** Offer of a position in a different classification. An employee who meets the qualification for a different classification but has not previously established displacement rights may be offered reassignment to a position within that classification provided that such reassignment does not displace another employee in that classification.
- N.** Notifying employees. An agency shall give written notice at least 20 days in advance to each employee being reassigned or separated. The Council may waive the 20 day notice upon proper justification for a reduced time limit. The agency's notice shall include the number of retention points assigned to the employee, the effective date of the action, the new job classification, the pay rate, the location of the position, the employee's right to request a review of the action, and the employee's recall rights, if applicable.
- O.** Employee request for review.
1. Within five days of receipt of a reassignment or separation notice, an employee may submit a written request to the agency head for a review of the procedures resulting in the employee's reassignment or separation. The employee's request shall contain information concerning any errors in the calculation of retention points and a proposed resolution. The agency head shall review the request and respond to the employee within five days after receipt of the request.
  2. An employee who wishes further review may submit a written request to the Council within 20 days after receiving the agency head's response. The Council shall investigate and respond to the employee and the agency head by submitting a final decision on the review within 30 days after receiving the employee's request.
- P.** Employee assistance. An agency shall establish a plan to assist all employees who are separated from the agency through a reduction in force.
- Q.** Reappointment list. If a permanent status employee is appointed to a lower classification as a result of a reduction in force or reallocation, Human Resources shall place the employee's name on a reappointment list for the last classification held and any previously held classification for which the employee is still qualified.
- R.** Recall list. If an employee is laid off due to a reduction in force, Human Resources shall place the former employee's name on a recall list for the last classification held and any previously held classification for which the former employee qualifies.
- S.** Order of names. On both recall and reappointment lists, Human Resources shall arrange the names of former employees in descending order of their retention points. If candidates have the same number of retention points, Human Resources shall resolve tied scores by applying the following tie-breakers in the following order of precedence:
1. The employee with the greatest length of qualifying service with the agency,
  2. The employee with the greatest length of qualifying service with the state,
  3. The employee who placed highest on the eligibility list for the classification, or
  4. If a tie continues to exist, it shall be broken by a lottery system.
- T.** Duration of list. A former employee's name shall remain on a recall list for up to three years from the date of separation. The name of a reappointment candidate shall remain on the reappointment list until promoted or the employee separates from the agency.
- U.** Background screening. A candidate on a recall list shall be subject to a background screening process.

**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 2090, effective May 10, 2000 (Supp. 00-2).

**R13-5-803. Disability**

An agency head shall establish policies and procedures for discontinuing the employment of an employee who becomes disabled and is unable to perform the essential functions of the job. Such policies and procedures shall comply with the applicable state and federal laws.

**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 2090, effective May 10, 2000 (Supp. 00-2).

**R13-5-804. Public Safety Personnel Retirement System Eligibility**

**A.** Membership in the Arizona Public Safety Personnel Retirement System is designated by the Council under A.R.S. § 38-842(19)(a). Commissioned employees in the following classifications are eligible for membership in the Public Safety Personnel Retirement System:

1. Director,
2. Deputy Director,
3. Assistant Director,
4. Bureau Chief,
5. Commander,
6. Lieutenant,
7. Sergeant II,
8. Sergeant I,
9. Officer,
10. Fixed Wing Pilot, and
11. Rotary Wing Pilot.

**B.** Employees who were in the following classifications on December 1, 1972 shall be eligible for membership in the Public Safety Retirement System.

1. Communications Technician
2. Radio Mechanic.

**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 2090, effective May 10, 2000 (Supp. 00-2). Amended by final rulemaking at 7 A.A.R. 5373, effective November 6, 2001 (Supp. 01-4).

**ARTICLE 9. REPEALED**

*Editor's Note: Article 9, consisting of Section R13-5-50, repealed effective June 7, 1978 (Supp. 78-3).*